

(1988) 09 KAR CK 0019

In the Karnataka High Court

Case No : Writ Petition No's. 13898 and 13899 of 1988

C.G. Somashankar

APPELLANT

Vs

Town Municipal Council

RESPONDENT

Date of Decision : 28-09-1988

Acts Referred:

Constitution of India, 1950 — Article 141

Karnataka Municipalities Act, 1964 — Section 36, 42, 42 (9), 47, 47 (3)

Citation : (1989) ILR (Kar) 1255

Hon'ble Judges : Chandrakantaraj Urs, J

Bench : Single Bench

Advocate : H.N. Narayan, for the Appellant; K.S. Venkatasubbaiah, for the Respondent

Final Decision : Dismissed

Judgement

Chandrakantaraj Urs, J.—Petitioners, who are members of the Town Municipal Council, Magadi Town, are aggrieved by the notices issued as at Annexures "C" & "D" by which the Chief Officer has called for a meeting on 29-9-1988 to consider two resolutions at the meeting expressing lack of confidence in the President and Vice-President respectively of the Town Municipal Council. The notices are dated 21-9-1988.

2. Contention in this Court is that the notices are issued in violation of the first proviso to Sub-section (9) of Section 42 of the Karnataka Municipalities Act, 1964 (hereinafter referred to as the "Act") and therefore void as ruled by this Court in Writ Appeal No. 2392 of 1982, disposed of on 28-7-1982

3. Facts leading to these Writ Petitions may be stated briefly and they are as follows:- By two letters addressed to the President bearing the date 5-9-1988, 11 members of the Magadi Town Municipal Council who are signatories to those letters, intimated that they had no confidence in the Vice-President and therefore the President should call a special general meeting to put the motions to vote. Similarly, the other letter indicated that they had no confidence in the President

and therefore that resolution may also be put to vote at the special meeting to be called in that behalf. The true copies of these letters are produced as Annexures "A" & "8" to the petition. On failure to call the special general meeting by the President, the signatories to the letters moved the Chief Officer to issue notices and notices have been issued as at Annexures "C" & "D" thereafter. These facts are not in dispute.

4. This Court in the afore-mentioned Writ Appeal took the view in the case of JANARDHANASA v. DEPUTY COMMISSIONER, BIJAPUR, AND THE TOWN MUNICIPAL COUNCIL, GULEDGUD Janardhanasa vs Deputy Commissioner, Bijapur, that 10 days notice should be there before any resolution is passed expressing lack of confidence and where there is not clear 10 days" notice, then the resolution will be invalid. Reliance was placed on the ruling of the Supreme Court in Jai Charan Lal Vs. State of U.P. and Others, dealing with Section 87-A(3) of the U.P. Municipalities Act which is said to correspond to first proviso to Sub-section (9) of Section 42 of the Act. In the U.P. Act, the expressions used were not less than 30 days and that was considered by the Supreme Court.

5. The relevant facts in Janardhanasa's case are as follows:- 15 Councillors vide notice dated 5-3-1981 requested the Chief Officer of the Town Municipal Council to call for a Special General Body Meeting of the Town Municipal Council to consider their motion of no confidence against the petitioner who was the acting Vice-President of that Town Municipal Council. The Chief Officer issued notice on 19-3-1981 fixing the date of the meeting as 23-3-1981. That notice was challenged in this Court before a learned single Judge who took the view that the notice issued was proper. It was against that order of the learned single Judge, the appeal was filed, fn these cases, we have a notice served as per letters at Annexures "A" & "B" on 5-9-1988 requesting the President to call a special general meeting to consider the motions of no confidence against the President and the Vice-President. It is thereafter that they have moved the Chief Officer who issued the impugned notices bearing the date 21-9-1988 calling a meeting for 29-9-1988 to consider the motions. Prima facie, the facts between Janardhanasa's case and the facts of these cases appear to be the same except for this that the notice that was given on 5-3-1981 was not to the President but not to the Chief Officer himself and the Chief Officer issued the notice on 13-3-1981 and therefore there was no clear 10 days" notice of the intention to move and in that circumstance the Division Bench held that there was failure to observe the mandate of Sub-section (9) of Section 42 of the Act.

6. Here, an examination of the language of Sub-section (9) of Section 42 read with Section 47 and Section 48 of the Act makes it abundantly clear that there has been no violation. Section 42(9) reads as follows:-

"(9) Every President and every Vice-President of a Municipal Council shall forthwith be deemed to have vacated his office if a resolution expressing want of confidence in him is passed by a majority of not less than two-thirds of the total number of Councillors at a special general meeting convened for the purpose:

Provided that no such resolution shall be moved unless notice of the resolution is signed by not less than one-third of the total number of Councillors and at least ten days notice has been given of the intention to move the resolution:

Provided further that where a resolution expressing want of confidence in any President or Vice-President has been considered and negatived by a Municipal Council, a similar resolution in respect of the same President or Vice-President shall not be given notice of or moved within one year from the date of the decision of the Municipal Council."

It is clear from the language employed in the proviso that 10 days should be reckoned from the date of notice of intention to move the resolution and not from any other date. On the facts of this case, notice of intention to move the resolution was given to the President on 5-9-1988. In the normal course, soon after 10 days from 5-9-1988, the President ought to have called a Special General Meeting in accordance with the requirement of Section 48 of the Act to which a reference will be made later in the course of this order.

7. When the President does not call the special general meeting which he should in terms of Section 47, it will be open to the Councillors concerned to act in accordance with Sub-section (3) of Section 47 to requisition a meeting to consider the motion of no confidence. Section 47 reads as follows:-

"47. Meeting - (1) The Municipal Council shall ordinarily hold at least one meeting in every month for the transaction of business (which shall be called an ordinary general meeting).

(2) The President may, whenever he thinks fit, and shall, upon the written request of not less than one-third of the whole number of Councillors and for a date not more than fifteen days after the presentation of such request, call a special general meeting.

(3) If the President fails to call a special general meeting as provided in Sub-section (2), the Vice-President or one-third of the whole number of Councillors may call such meeting for a day not more than thirty days after the presentation of such request and require the Chief Officer or the Municipal Commissioner to give notice to the Councillors and take such action as may be necessary to convene the meeting.

(4) Any meeting may be adjourned until the next or any subsequent date, and on adjourned meeting may be further adjourned in like manner."

In other words, Sub-section (3) of Section 47 comes into operation when the President has failed to call a special general meeting as provided in Sub-section (2) thereof, in which event, either the Vice-President or one-third of the whole of Councillors may call such a meeting on or for a day not more than thirty days after the presentation of such request and require the Chief Officer or the Municipal Commissioner to give notice to the Councillors. In other words, the request referred to in Sub-section (3) is the request addressed to the President

under Sub-section (2). Therefore, 30 days referred to in Sub-section (3) is with reference to that date. The request here has been made on 5th September 1988. The meeting now called by the Chief Officer is for 29-9-1988 which definitely falls within 30 days of 5th September 1988.

8. In this context, it is useful to see the provisions contained in Section 48. Section 48 reads as follows:-

"Seven clear days notice of an ordinary general meeting, and three clear days notice, or in case of great urgency, notice of such shorter period as is reasonable, of a special general meeting, specifying the time and place at which such meeting is to be held and the business to be transacted thereat, shall be given by the Chief Officer or the Municipal Commissioner to the Councillors, and posted up at the Municipal Office."

9. From the above, it is clear that a special general meeting may be called within 3 days notice or even shorter period if the urgency is made out. Section 48 which occurs after Section 42 and Section 47 of the Act clearly is for the purpose of calling of meetings including the meeting contemplated u/s 47 as well as u/s 42 of the Act. It is the general provision made for calling of meetings and issuance of notices.

10. This has fallen for consideration by the Supreme Court in the case of K. Narasimhiah Vs. H.C. Singri Gowda, That matter arose under the Mysore Town Municipalities Act of 1951. In that case, 13 Councillors out of 20 belonging to Holenarsipur Municipality sent a request to the President to convene a special general meeting to discuss a resolution expressing no confidence in him as President. That request was handed over to the President on 25th September 1963. However, the President did not take any steps for convening the meeting the Vice-President acted in the matter calling a meeting to discuss the resolution to express no confidence in the President. A notice under the Vice-President's signature stating that it was proposed to hold a special general body meeting of the Municipality on the 14th October 1963 at 10 A.M. in the office premises asking the members to be present in time was served on the Councillors. One copy of the notice was also pasted up at the Municipal Office as required by Section 27(3) of the Mysore Town Municipalities Act, 1951 (hereinafter referred to as "the Act"). The notice bore the date 10th October 1963. On fifteen of the twenty Councillors the notice was personally served on that very date. On three of the Councillors, viz., the President Narasimhiah and two others, the notice was served on the 13th October. It was served on another Councillor on the 12th October. Therefore, when the meeting was held on 14th October, nineteen of the twenty Councillors were present including the President, but he appears to have left the meeting soon hereafter. The motion against the President was carried and that was challenged in this Court inter-alia contending that there was violation of the provision of the Mysore Act of 1951 corresponding to Section 48 of the Act inasmuch as there was no clear 3 days notice contemplated to some of the members admittedly.

11. After discussing a number of cases, both Indian and English, the Supreme Court ruled as follows:-

"(15) A consideration of the object of these provisions and the manner in which the object is sought to be achieved indicates that while the legislature did intend that ordinarily the notice as mentioned should be given it could not have intended that the fact that the notice is of less than the period mentioned in the section and thus the Councillors had less time than is ordinarily considered reasonable to arrange his other business to be free to attend the meeting, should have the serious result of making the proceedings of the meeting invalid.

(16) It is important to notice in this connection one of the provisions in Section 36 of the Act. It is in these words:-

"No resolution of a Municipal Council or any committee appointed under this Act shall be deemed invalid on account of any irregularity in the service of notice upon any Councillor or member provided that the proceedings of the Municipal Council or committee were not prejudicially affected by such irregularity."

(17) It is reasonable to think that the service of notice mentioned in this provision refers to the giving of notice to the Councillors. Quite clearly, any irregularity in the manner of giving the notice would be covered by the words "irregularity in the service of the notice upon any Councillor." It appears to us, however, reasonable to think that in making such a provision in Section 36 the legislature was not thinking only of irregularity of the mode of service but also of the omission to give notice of the full period as required."

12. From the above, it is clear that really the stipulation of time for calling a special general meeting is really governed by Section 48 and not any other provision of the Act. If Section 48 itself is held to be directory, then it cannot be said, in the instant case, that notice of 21 September 1988 giving more than 7 days notice to the Councillors to attend the special general meeting would be void in any manner. Unfortunately, in the case of Janardhanasa this was not brought to the notice of the Division Bench and the Division Bench proceeded on the basis that the time stipulated for calling a meeting is controlled by the first proviso to Section 42 and not Section 48 as is apparent and I am bound by the decision rendered by the Supreme Court in terms of Article 141 of the Constitution.

13. In that view of the matter, the petitioners have not made out a case for interference and the Writ Petitions are rejected.