
(1997) 10 AP CK 0070

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17071 of 1997

Challapureddy Venkata Rao

APPELLANT

Vs

Revenue Divisional Officer and Another

RESPONDENT

Date of Decision : 01-10-1997

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 156(2), 22, 22(2), 245

Citation : (1998) 1 ALT 405

Hon'ble Judges : T.N.C. Rangarajan, J

Bench : Single Bench

Advocate : K. Manik Prabhu, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

T.N.C. Rangarajan, J.—This writ petition is directed against the notice dated 14-7-1997 convening a meeting of Dattirejeru Mandal Parishad on 30-7-1997 to consider the motion of no confidence in the President of the Parishad.

2. The petitioner is one of the members of the Mandal Parishad Territorial Constituency of Dattirejeru Mandal Parishad. This Parishad consists of 15 members, 8 of whom belonged to Congress (I) Party, 5 belonged to Telugu Desam Party and the remaining 2 are independents. The Revenue Divisional Officer, Vizianagaram received on 12-7-1997 a notice in Form-II dated 12-7-1997 signed by 10 members of the Parishad expressing want of confidence in the President. It may be mentioned that the President was a member of the Congress (I) Party. Since that party had 8 out of 15 seats, he had been elected by the majority. However, of the ten persons who expressed the want of confidence, 3 belonged to Congress (I) Party. The balance being 7 members belonging to T.D.P. and two independents. The Revenue Divisional Officer, thereupon issued a notice in Form-V dated 14-7-1997 to all the 15 members of the Mandal Parishad. The notices were dated 14-7-1997 and signed on that day calling for a special meeting on 30-7-1997 to consider the motion of no confidence. These notices were served on the members on 21st and 22nd July,

1997 through the Mandal Parishad Development Officer either by giving it to such member or to an adult member of his family.

3. The petitioner, who was one of the members of the Parishad and a member of the Congress (I) Party filed this writ petition on 24-7-1997 three days before the date on which the meeting was to be held and contended that Rule 3 of the Rules relating to the motion of no confidence in G.O.Ms. No. 137 dated 27-3-1997 requires notice of not less than 15 clear days, and the said requirement was not fulfilled by the notice as it was served only on 22-7-1997 just seven days prior to the date of the meeting being July 30,1997. The writ petition was admitted on 28-7-1997 and an interim direction was given to the respondents to proceed with the meeting, however, result of no confidence motion was not be published until further orders. It is stated that the meeting was actually held on 30-7-1997 but the petitioner as well as the other 4 members of the Congress (I) Party, who were not signatories to the no confidence motion did not attend the meeting. The 10 members of the Parishad who are signatories to the motion filed a petition to implead themselves and also filed counter-affidavit pleading for vacating the interim direction. It is contended by these persons that the Rule which contemplated giving of notice of 15 days has no reference to the service of the notice but only the date of the notice, and therefore, the requirement was fulfilled in this case as the notice is dated 14-7-1997 which is more than 15 days before the date of the meeting 30-7-1997. It is also contended that the petitioner who had received the notice cannot complain that he had no notice of the meeting particularly when he did not care to attend the meeting.

4. The Revenue Divisional Officer has also filed a counter-affidavit stating that the party affiliation has no criterion for seeing whether 50 per cent of the total members of the Parishad have proposed a no confidence motion though the election to the office of the members is conducted on party basis. It is also stated that the notice was signed on 14-7-1997, served on 21st and 22nd July, 1997 and any delay in service cannot be counted against the required notice period. It is also pointed out that the petitioner did not protest when he received the notice, and hence, it is pleaded that the interim direction should be vacated.

5. In this background, the writ petition itself was heard. The learned Counsel for the petitioner submitted that since emphasis is on 15 clear days notice the date of service is significant and due to delay in service if the period of notice is reduced then the rule cannot be taken to be fulfilled. The learned Counsel for the petitioner also desired to take an additional legal point namely that under Article 243-F of the Constitution of India, a member of the Panchayat shall be disqualified if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned which attracts the provisions of X Schedule of the Constitution according to which there is a disqualification on ground of defection. He submitted that the three Congress (I) members who were signatories to the no confidence motion must be taken to have defected and thereby disqualified themselves and consequently their votes

cannot be counted in passing the motion of no confidence. He also pointed out that this question has been referred to a Bench in some other case.

6. On the other hand, the learned Advocate General appearing for the 1st respondent submitted that the adoption of the date of service as a starting period of counting the notice period will lead to chaos as the notice may be served on different people, on different dates and there will be no way of having a clear picture of the actual period of notice. He also submitted that in the case of notices being sent by post, the date of despatch is taken as the starting point whatever be the delay in service and the same principle could be applied where the notices are served by hand-delivery also. The learned Counsel for the impleaded respondents submitted that the notices were despatched through the Mandal Development Officer, and therefore, the delay cannot be attributed to the 1st respondent, and hence, the date of issue of the notice must be taken to be relevant for counting the period of notice. The learned Advocate General also submitted that u/s 22 (2) even where there is a dispute as to disqualification of a member, it will not prevent the member from functioning until the dispute is settled.

7. On a consideration of the rival submissions, I am of the opinion that on the facts of the present case the challenge to the notice must be taken to be infructuous. Taking up the alternate plea, first I find that u/s 156 (3) (sic. 156(2)), the provisions of Section 22 are applicable to the members of the Mandal Parishad also. Sub-section (2) of that Section provides that even if there is a dispute as to the disqualification of a member pending adjudication, the member shall not be prevented from functioning as such until the dispute is resolved. Therefore, even if we assume that the provisions of the X Schedule to the Constitution are to be read as part of the Panchayat Raj Act so as to provide for disqualification on defection, such a disqualification has to be adjudicated before a member is actually disqualified and pending such adjudication because of Section 22 (2), the concerned member cannot be prevented from functioning as such. (See also *P.V. Somaraju v. Principal Munsif Magistrate*, 1968 (2) An.W.R. 343). In the circumstances, I am of the opinion particularly when no dispute as such has been raised, and even such a dispute is raised, pending adjudication of such a disqualification, the members of the Congress (I) Party who are signatories to the no confidence motion, cannot be prevented from functioning as members and participate in the meeting. Hence, this ground which is entertained as a legal ground fails.

8. With regard to the question whether the notice was in conformity with the Rule 3. We may read that Rule first.

"Rule 3. The concerned officer specified in Rule 2 (hereinafter in this rule referred to as said officer) shall then convene and preside over a meeting for the consideration of the motion at the office of a Gram Panchayat, or at the Mandal Parishad, or at the Zilla Parishad, as the case may be, on a date appointed by him which shall not be later than thirty days from the date on which the notice

under Rule 2 was delivered to him. He shall give to every member of Gram Panchayat, Mandal Parishad or Zilla Parishad as the case may be the notice of not less than fifteen clear days excluding the date of the notice and the date of the proposed meeting, of such meeting in Form-IV, or in Form-V or in Form-VI Annexed to these rules either in English or in Telugu or in Urdu language, whichever is applicable. Every such notice shall be delivered as specified below; namely:-

- (a) by giving or tendering such 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 or by giving or tendering the same to some adult member or servant of his family; or
- (c) if such member does not reside in the Gram Panchayat area or Mandal Parishad area; or within the District and if his address is known to the District Panchayat at Officer/Chief Executive Officer or the Sarpanch of the Gram Panchayat to be elsewhere, by sending the same to him through registered post with Acknowledgment due; or
- (d) if none of the means aforesaid is available or if the persons referred to in Clauses (a) and (b) refuse to receive the notice, by affixing the same at some conspicuous part of his place of residence or business.

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

9. This Rule provides that the meeting has to be called within thirty days and the notice has to give fifteen clear days time excluding the date of notice and the date of the meeting. The contention of the Advocate General is that the date of service, is therefore, irrelevant whereas the contention of the learned Counsel for the petitioner is that if the emphasis is on fifteen clear days of time to be given to the members participating in the meeting, date of service is the starting point for counting the period of notice. I have not been shown any background material on references to other statutes which gives the purpose of the requirement of clear days of notice period. Normally, it could be assumed that a reference to so many clear days of notice indicates an intention that the recipient will have so many clear days available either for preparing to attend the meeting or for considering the matters required to be discussed at the meeting and prepare himself for the debate. If such an intention is manifest and significant, then, we must proceed with the view that such period should not be reduced in any situation.

10. The Rule itself provides for four modes of service of notice. The first is giving

or tendering notice to the member and the second is to an adult member of the family, the third is by registered post and the fourth is by affixing at the residence of the member. It is possible, in the three modes, except the mode of sending by registered post, to see that the notices are served on the same day to all the members by giving them on that day, by giving it to the member of the family or a servant if they are not available and even by affixing at the residence if no one is available. But in case notice is sent by registered post, it is not possible to ensure that all notices are served on the same day on all the members. A situation will, therefore, arise in the case of a despatch by post, that even though on the date of issue or despatch of the notice, there will be more than 15 clear days till the date of the meeting, the period will be considerably reduced if there is postal delay in the service of the notice. It is this situation which was considered by the Supreme Court in *Jai Charan Lal Vs. State of U.P. and Others*, . The Supreme Court pointed out that the words "sent" shows that the critical date is the despatch of notice and the fact that it was delivered subsequently thereby reducing the period of 30 clear days required u/s 87-A of the U.P. Municipalities Act did not vitiate the meeting. This is also a case relating to a notice intending to move a motion of no confidence which has issued on November 17 fixing the meeting on November 25 where the Section required not less than seven clear days of notice. The notice was sent on 17th November by Registered Post for the meeting called on 25th November and postal delay reduced the number of clear days to less than seven. Yet, the Supreme Court ignored this reduction in the period of notice. Shackleton on the Law and Practice of Meetings, 6th edition page 38 states that "in the absence of any specific provision, "days" mean clear days; the term "clear days" means exclusive of the day the notice is served, and of the day on which the meeting is held." But the case referred to the statutory provisions where the days were counted from service of notice. Similarly, *Horsley's Meetings*, 2nd Edition, Page 17 states that "the term "clear days" as regards notice, e.g. "at least (fourteen) clear days notice must be given", means that there needs to be at least (fourteen) days between the date of issuing (normally posting) the notice and the date of the meeting excluding both dates". It is also stated that the Rules usually provided for serving notices by post although this would not normally be specified as a requirement. Where a notice of meeting is posted, the notice is deemed (from a legal point of view) to be served on the day after the date of its posting. In the Companies Act also Section 53(2) (b) provides that service shall be deemed to have been effected at the expiration of 48 hours of the letter containing the notice is posted. The Courts have also taken the view under the Companies Act that the requirement of notice period is directory and not mandatory and is only voidable on the members showing that prejudice has been caused by reduction in the period of notice, and not void.

11. Now that we find that in the case of service of notice by registered post, the postal delay is to be disregarded and the period of clear days of notice is to be counted from the date of sending the notice until the date of the meeting, can

the situation be different where the notices are sent by hand-delivery. We are concerned with the Government Department which sends a notice subject to beauracritic red-tape. Even though the notices are dated 14th July, and the record shows that they have been given to the concerned section for despatch it takes some time for the ministerial staff to actually take notices and deliver them to the members. It cannot be said that the delay is deliberate unless any mala fides are alleged which is not the case here. Even in the routine despatch of letters, it takes time, and hence, there is some delay after the notices have left the hands of the 1st respondent, for which it is a moot question whether he could be held responsible. Such a delay is analogous to the postal delay. If, as accepted by the Supreme Court, the postal delay can be disregarded and the period of notice can be counted from the date of the despatch to the date of the meeting, I do not see why the same method of counting should not be applied in the case of despatch of notice to be delivered by hand. When such a view is possible and the requirement of notice period is not shown to be mandatory, the administrative delay resulting in reduction of the notice period has to be ignored. From this point of view, I am of the opinion that the period of notice has to be taken from the date of despatch which is 14-7-1997 according to the records and the date of meeting is 30-7-1997 giving a period of fifteen clear days and thus fulfilling the requirement of the rule.

12. The learned Counsel for the impleaded respondents also relied on the decision of the Allahabad High Court in Dr. B.N. Sarin Vs. State of U.P. and Others, and submitted that since the petitioner was served with the notice as well as the interim direction of the Court permitting the meeting to be held and yet did not attend the meeting, he was precluded from questioning the same. I find force in this argument also. Even if the contention of the petitioner were to be accepted and it is to be held that the notice period was not less than 15 clear days, the rule not being mandatory, the petitioner has to show how he was prejudiced by the reduction in the notice period due to delay in service period. The petitioner has not pleaded any such prejudice and on the face of it there is no material for the petitioner to allege or establish such a prejudice. The only point that could be taken was that the three Congress (I) members who signed the no confidence motion were taken to be defectors thus disqualifying themselves. But such a disqualification until established and accepted by the authorities u/s 22 cannot be prevented from participating in the meeting. Even if such a plea is raised those three persons could claim that they had only split the party as they would be more than one-third of the strength of the Congress (I) party in the Parishad, and therefore, exempted from the disqualification. The result would be that they cannot be prevented from participating in the meeting pending adjudication and may not also be disqualified in the adjudication with the consequence that the petitioner could not have any chance of defeating the no confidence motion. More over, the President, in whom the motion expressed want of confidence, has himself not agitated this matter and though the petitioner as a member of the party could agitate the matter, it appears that by

abstaining from the meeting, the members of the Congress (I) Party did not pay heed to the interim direction of this Court, thus, admitting that they have no hope of defeating the no confidence motion. Since real prejudice cannot be demonstrated, the notice is not vitiated by any inadequacy in the period of notice. I am, therefore, of the considered opinion that the challenge to the notice for the meeting held on 30-7-1997 for considering the motion of no confidence was infructuous. The result of the meeting shall be declared. The writ petition, is therefore, dismissed. No costs.