

(1980) 03 KAR CK 0031
In the Karnataka High Court
Case No : WP 4033/80

Chambanna

APPELLANT

Vs

Chief Officer, Town Mun. Council, Nargund

RESPONDENT

Date of Decision : 05-03-1980

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 47(2)

Citation : (1980) 2 KarLJ 57

Hon'ble Judges : Swami, J

Judgement

1. In this writ petition under Art. 226 of the Constitution, the petitioner has challenged the validity of the notice dated 29-2-1980 issued by the Chief Officer, Town Municipal Council Nargund, calling for the Special General Meeting of the Town Municipal Council on 6th March, 1980 for consideration of the "No confidence motion" against the President and Vice-President of the Town Municipal Council, Nargund.

2. Sri Vijayashankar, the learned Counsel appearing for the petitioner, submitted that though the notice as required under sub-section (2) of S. 47 of the Karnataka Municipalities Act, 1964 (hereinafter referred to as "the Act"), was given to the petitioner for moving "No confidence motion", since that notice was a composite notice, no action could be taken; therefore, the President informed the Councillors that the said notice was invalid, as such no meeting could be called. It was also further submitted that on the ground that the President did not call the meeting as required by Sec. 47(2) of the Act, the required number of Councillors appear to have requested the Chief Officer to call a special general meeting to consider the resolutions expressing want of confidence in the President and Vice-President and in pursuance of that requisition, the Chief Officer has issued the meeting notice as per Annexure "A" calling for a special general meeting of the Council on 6-3-1980.

3. Sri Vijayashankar, the learned Counsel for the petitioner, advanced the following contentions for consideration:

(i) The notice dated 7-2-1980 received by the petitioner on 12-2-80 for the purpose of calling a special general meeting to move a "No confidence motion" against the President and Vice-President, was not valid. Therefore, it was not open for the Councillors to request the Chief Officer to call a special general meeting; hence the notice-Annexure "A" calling for a special general meeting of the Council, is bad in law;

(ii) That as per the proviso to Sec. 48 of the Act, the motion or proposition in respect of which notice is given shall relate to matters connected with the municipal administration and the motion of "No confidence motion" cannot be said to relate to the matters connected with the municipal administration; therefore, the notice Annexure-A issued by the Chief Officer calling for a special general meeting to consider the "No confidence motion" is illegal and unauthorised.

4. Though the validity of the notice dated 7-2-1980 received by the President on 12-2-1980 was urged, but the said notice was not produced along with the writ petition and the same was produced during the course of the argument and it was taken on record. On going through the said notice, it is clear that the notice is addressed to the President of the Municipal council and it also contains the resolution of want of confidence in the President and Vice-President of the Municipal Council intended to be moved in the special general meeting of the Council called for that purpose and it is signed by the requisite number of Councillors. It is not provided in the Act that two separate notices should be given to call for a special general meeting to express want of confidence in the President and the Vice-President. Whether the motion of no confidence is proposed to be moved against the President or the Vice President, in either case the notice to call a special general meeting for that purpose is to be given to the President only; except during the absence of a President for any period exceeding seven days, such notice may be given to the Vice President who is entitled to exercise the powers and perform the duties of the President during the absence of the President for any period exceeding seven days as provided by Sec. 44(2)(b) of the Act, as amended by Act No. 83 of 1976. There is no bar contained in the Act, for giving a composite notice to call for special general meeting of the Council for expressing want of confidence in the President and the Vice-President. A single notice may contain more than one motion or proposition intended to be moved in the special or ordinary general meeting. In the absence of a specific provision providing for issue of two separate notices and in the absence of any prohibition contained in the Act, for issuing of a composite notice requesting the President to call for a special general meeting of the council for expressing want of confidence in the President and the Vice-President, it is not possible to hold that a single notice of the resolution signed by the requisite number of councillors given to the President for moving the motion of want of confidence in the President and the Vice-President, can be held to be invalid. When once the written request is made by the requisite number of councillors for calling a special general meeting, in view of the provisions contained in Sec.

47(2) of the Act, it is incumbent upon the President to call a special general meeting of the council for the purpose of moving a no-confidence motion. The President has no option but to call a special general meeting. The provisions contained in Sec. 42(9) read with Sec. 47(2) of the Act, make it clear that when once the notice of the resolution for expressing want of confidence is given for calling a special general meeting, the President of the Municipal Council is bound to call such a meeting for a date not more than 15 days after the presentation of such request. In the instant case, the President was not at all justified in not calling a special general meeting as requested by the requisite number of councillors by the notice dated 7-2-1980. Accordingly, when the President failed to call the special general meeting within 15 days from the date of presentation of the aforesaid notice, the Vice President or 1/3rd of the whole number of councillors were, as per Sec. 47(3) of the Act, entitled to call such meeting for a date not more than 30 days after the presentation of the aforesaid notice and for that purpose, they were entitled to require the Chief Officer of the Municipal Council to give notice to the Councillors and take such action as may be necessary to convene the meeting. Accordingly, the requisite number of councillors have requested the Chief Officer of the Municipal Council to call a special general meeting of the Council for expressing want of confidence in the President and the Vice-President. In pursuance of that, the Chief Officer has issued the notice dated 29-2-1980 (Annexure-A) calling for a special general meeting on 6-3-1980 for expressing want of confidence in the President and the Vice-President of the Municipal Council. Thus, from what has been stated above, it becomes clear that the first contention cannot be accepted.

5. The second contention cannot also be accepted. What the proviso to Sec. 48 of the Act provides is that the motion or proposition in respect of which notice is given shall relate to matters connected with the municipal administration and shall not be inconsistent with the provisions of the Act. The contention of the learned Counsel that the motion of no-confidence does not relate to municipal administration and it relates to the constitution of the municipality, cannot be accepted. The President and the Vice-President of the municipal council cannot carry on the municipal administration without enjoying the confidence of the majority of the municipal councillors. Therefore, it cannot be held that the motion of no confidence is not connected with the municipal administration. Further, the Act provides for moving the motion of want of confidence and it also provides for the manner in which it should be done. The resolution expressing want of confidence is to be passed only in the special general meeting called for that purpose as per S. 42(9) of the Act. Sec. 48 of the Act only provides for issuing of notice calling for the ordinary or special general meetings of the municipal council for transacting the business in such meetings. The moving of motion of want of confidence is also the business of the municipal council to be transacted in a special general meeting called for that purpose. Even when the President of the municipal council calls for a special general meeting in pursuance of the written request of the requisite number of councillors given as per Sec. 47 (2)

read with Sec. 42 (9) of the Act for the purpose of moving a motion of want of confidence, the notice of such a meeting is also required to be given as per Sec. 48 of the Act only. Therefore, the contention that the motion of no confidence cannot be said to relate to the matters connected with the municipal administration, is not at all acceptable having regard to the provisions contained in Secs. 42 (9) and 47 (2) read with Sec. 48 of the Act.

6. For the reasons stated above, I see no reason to issue Rule. Hence this writ petition is rejected.