

(1980) 02 KAR CK 0019
In the Karnataka High Court
Case No : WP 2418/80

Fakiragouda Jeevanagouda

APPELLANT

Vs

Chief Executive Officer, Mundagod and Others

RESPONDENT

Date of Decision : 04-02-1980

Acts Referred:

Karnataka Village Panchayat and Local Boards Act, 1959 — Section 32(2)

Citation : (1980) 2 KarLJ 51

Hon'ble Judges : Swami, J

Judgement

1. The petitioner who was the Chairman of the village Panchayat Committee, Hunagund, taluk Mundagod, has in this petition under Arts. 226 and 227 of the Constitution, challenged the validity of the no-confidence motion passed against him on 7121979 and also the consequential order passed by the Assistant Commissioner, Sirsi sub-division Sirsi, under sub-section (2) of Section 32 of the Karnataka Village Panchayats and Local Boards Act, 1959 (hereinafter referred to as the Act) removing the petitioner from the office of the Chairman of the Village Panchayat Committee, Hunagund, as he himself did not vacate the office in pursuance of the passing of the motion of no confidence referred to above.

2. Sri R.U. Goulay, the learned Counsel for the petitioner, advanced the following contentions:

(i) that subsequent to the issue of the notice to the petitioner, he has called more than one meeting of the Panchayat Committee and in those meetings, the members did not move the no-confidence motion; therefore, it was not at all open for the Chief Executive Officer of the Taluk Developmeant Board, Mundagod to call a meeting of the Panchayat Committee for that purpose;

(ii) that the Chief Executive Officer having informed the members of the Panchayat Committee who gave the notice of the motion of no-confidence by the communication dated 12.11.79 that the notice having not been given in a prescribed form, no action can be taken on such a notice, it was not open for him to call the meeting of the panchayat Committee to consider the motion of no-

confidence as per the meeting notice dated 3-12-1979;

(iii) that the petitioner cannot be held to have failed to call the meeting of the Panchayat Committee to consider the motion of no confidence in view of the fact that he has called two meetings of the panchayat committee before the meeting in question was held;

(iv) that the notice of no confidence motion contained certain allegations which fall within the scope of S. 34 of the Act; therefore, it is not a valid notice.

3. The petitioner was the Chairman of the Village Panchayat Committee in question. It is not in dispute that he was served with the notice of a motion of no-confidence in writing and signed by the requisite number of members of the village Panchayat Committee in token of their supporting the notice. When once the notice of the motion of no-confidence against the petitioner was served upon him, he was required to call a meeting of the Panchayat Committee for the purpose of considering the motion of no-confidence within 30 days from the date of the receipt of the notice as per Sec. 32 (1) of the Act. It is not the case of the petitioner that he called the meeting of the Panchayat Committee within 30 days from the date of receipt of the notice for considering the motion of no-confidence against him. The petitioner called for the meeting of the Panchayat Committee on 29.11.1979 for consideration of other subjects and not for considering the motion of no-confidence, even though by that time he was served with the notice of the motion of no-confidence. On 29-11-1979, the members of the village panchayat did not attend the meeting as that was not a meeting called for the purpose of consideration of the motion of no confidence. Accordingly, the petitioner Chairman himself adjourned the meeting to 5.12.1979. After the expiry of 30 days from the date of issue of notice, the Chief Executive Officer issued the meeting notice calling the meeting of the panchayat committee for consideration of motion of no-confidence on 7-12-79 as required by Sec. 32(1) of the Act. On that day, the motion of no-confidence was passed with the support of nine members. It is not in dispute that the motion of no-confidence was passed with the support of the requisite number of members. Under these circumstances, the contention of Sri Goulay that the Chairman called the meeting of the panchayat Committee on 29-11-1979 and also on 5-12-1979 and in those meetings, members ought to have moved the motion of no-confidence, cannot at all be accepted, because those meetings were not the meetings called for the specific purpose of consideration of the motion of no-confidence. Sec. 32 (1) of the Act, specifically provides that a meeting for consideration of the motion of no-confidence is to be convened. Thus, the motion of no confidence is to be moved and considered only in the meeting of the Panchayat Committee called for that purpose and not in any other meeting. The meeting dated 29-11-1979 was not the meeting called for, for the purpose of consideration of the motion of no-confidence. As far as the meeting of 7-12-1979 is concerned, it was the adjourned meeting of 29-11-1979. It was not at all open for the petitioner to call a meeting of the Panchayat Committee for consideration of other subjects when

he was required to call for a meeting of the panchayat Committee to consider the motion of no confidence as per Sec. 32(1) of the Act. Therefore, I do not find any substance in the first contention urged on behalf of the petitioner.

4. The second contention of the petitioner is that the Chief Executive Officer having first informed the members of the Panchayat Committee who gave the notice of a motion of no confidence that the said notice was not in the form prescribed by law and as such, no action can be taken on such notice; it was not at all open for him to call a meeting of the Panchayat Committee by the notice dated 3-12-1979 for consideration of the motion of no-confidence proposed to be moved against the petitioner. Till the expiry of 30 days from the date of receipt of the notice of a motion of no-confidence by the Chairman of the Village Panchayat Committee, the Chief Executive Officer will not have an authority to do anything in the matter. The authority of the Chief Executive Officer will come into play only when the Chairman of the Panchayat Committee fails to call for a meeting within 30 days as stated in S. 32(1) of the Act; therefore anything done within 30 days of the receipt of the notice of motion of no-confidence by the Chief Executive Officer will not have any effect on the notice of a motion of no-confidence given by the requisite number of members of the Panchayat Committee. Therefore, merely because the Chief Executive Officer informed the members of the Panchayat Committee that the notice issued was not in the prescribed form and no action could be taken on such a notice, the efficacy of the notice of a motion of no confidence was not taken away and the duty of the Chief Executive Officer to call for the meeting of the Village Panchayat Committee to consider the motion of no-confidence on the failure of the Chairman of the Panchayat Committee to call the meeting of the Panchayat Committee for that purpose as per. Section 32(1) of the Act did not cease to exist, merely because of the aforesaid reply given by him before the expiry of 30 days. Therefore, the second contention of the petitioner cannot also be accepted.

5. The third contention that the Chairman cannot be said to have failed to call for a meeting to consider the motion of no-confidence, cannot also be accepted. The meeting of the Village Panchayat Committee called for by the petitioner was not for consideration of the motion of no confidence, but it was for consideration of other subjects. Therefore, the meeting of the Village Panchayat Committee called for by the petitioner on 29-11-1979 for consideration of other subjects cannot be considered to be the meeting called as per Sec. 32(1) of the Act. The meeting of 5-12-1979 was the adjourned meeting of 29-11-1979. Therefore, the contention that the Chairman having called the meeting for consideration of the subjects other than the motion of no confidence cannot be said to have failed to call for the meeting of the Village Panchayat Committee for consideration of a motion of no confidence, is untenable and cannot at all be accepted.

6. The last contention is that the notice of no-confidence motion contains several allegations against the petitioner therefore, such a notice cannot be said to be a valid notice as those allegations fall within the ambit of Sec. 34 of the Act. The

power under Sec. 34 is to be exercised by the Deputy Commissioner of the district. Admittedly, the notice of no confidence motion has not been either addressed or sent to the Deputy Commissioner or to the person authorised to exercise the power under Sec. 34 of the Act; as such, it cannot be held that the said notice was intended for taking action under Sec. 34 of the Act. The notice in question Ext-A, was the one intended only for moving the motion of no confidence against the petitioner. The mere fact that it was not in the prescribed form, it will not cease to be a notice of a motion of no confidence. What is important is the substance of the matter and not the form. Therefore, the last contention of the petitioner cannot also be accepted.

7. Sri Goulay, the learned Counsel for the petitioner relied upon a decision of this Court in *Bassanna v. Divisional Commissioner*, (1963) 2 Mys.L.J. 504. That was a case in which the validity of Rule 6 of the No Confidence Motion against Chairman or Vice Chairman of the Panchayat (Procedure) Rules, 1959, as it stood then was challenged and it was held that the said Rule was ultra vires of the Act. The old Rule 6 of the aforesaid Rules is not in force and in its place new Rule 6 has been framed. Therefore, the aforesaid decision cannot be of any assistance to the learned Counsel for the petitioner. The order impugned dated 24-1-1980 produced as Ext-G is only an order passed in pursuance of the failure on the part of the petitioner to vacate the office of the Chairman and to hand over the charge of the Village Panchayat Committee pursuant to the passing of the motion of no-confidence against him and the said order is in consonance with the provisions contained in sub-sec. (2) of Sec. 32 of the Act. Thus, I do not see any ground to issue Rule in this writ petition and the same is accordingly rejected.