

(1997) 12 AP CK 0078

In the Andhra Pradesh High Court

Case No : Writ Petition No. 26450 of 1997

Hari Satyanarayana and Another

APPELLANT

Vs

Govt. of A.P. and Others

RESPONDENT

Date of Decision : 15-12-1997

Acts Referred:

Andhra Pradesh Municipalities Act, 1965 — Section 10A, 13A, 14, 15, 16
Constitution of India, 1950 — Article 226

Citation : (1998) 1 ALD 292 : (1998) 3 AnWR 25

Hon'ble Judges : V. Rajagopala Reddy, J

Bench : Single Bench

Advocate : Mr. M.N. Narasimha Reddy, for the Appellant; Government Pleader for HMA and GAD, Mr. G. Chandraiah, SC for Municipalities and Mr. M.R.K. Chowdary, SC, for the Respondent

Judgement

1. The short but important question that arises in the instant writ petition is whether the Government of the State is empowered to cancel/suspend the meeting convened to consider the motion of "No- Confidence" moved against the Vice-Chairperson of the Municipal Council, under the provisions of A.P. Municipalities Act, 1965, (for short "the Act").

2. To decide the above question, it is necessary to notice few facts : The petitioners are the Councillors of Palavanha Municipality of Ward Nos.20 and 22, elected in the elections held on 19-3-1995. The election to the post of Vice-Chairperson was held and the 4th respondent has been, elected as Vice-Chairperson. Thereafter on 12-9-1997 majority members of the Municipal Council submitted to the 2nd respondent a motion of "No-Confidence" against the 4th respondent, u/s 46 of the Act, The 2nd respondent, after considering the said motion, issued notices to all the eligible members of the Municipal Council, fixing the date of meeting on 7-10-1997 at 11 am. in his proceedings dated 18-9-97. At that time, one of the Councillors thought it fit to challenge the election of the petitioners as Councillors, as null and void, by filing the W.P.22224/97 and also sought for an interim direction restraining the petitioners from participating in

the meeting and exercising their vote. But, the writ petition, however, was dismissed. It is also interesting to notice that while the No-Confidence Motion was already convened, it was disputed that the petitioners were not qualified to participate in the No-Confidence Motion on the ground that they were holding office of profit and for that reason they were disqualified. Hence, the petitioners filed O.P. Nos. 666/97 and 665/97 respectively before the District Judge, Khammam, u/s 17 of the Act, to obtain a decision with regard to the alleged disqualification of the petitioners and the same are pending decision. As per sub-section (3) of Section 17 of the Act, the member shall be entitled to act as if he was not disqualified, pending decision of the District Judge. The 4th respondent, against whom meeting to consider No-Confidence Motion was proposed to be convened on 7-10-97, approached the Government to stall the meeting, being the follower of Telugu Desam Party. The Government, thereupon, passed the impugned order dated 6-10-1997 suspending the meeting proposed to be convened on 7-10-1997. The said order was passed in exercise of the powers of the Government conferred by sub-section (1) Clause (c) of sub-clause (ii) and sub-section (2) of Section 59 of the Act. The order was communicated by Fax message to the 2nd respondent, who passed the consequential order dated 6-10-1997, which is also impugned in the instant case, cancelling the meeting.

3. It is seriously contended by Sri M.N. Narasimha Reddy, learned Counsel for the petitioners, that Respondents 1 and 2 have no jurisdiction to pass the orders u/s 59 of the Act. It is also contended that the orders being mala fide are liable to be quashed.

4. The contentions of the learned Counsel for the petitioners are stoutly refuted by the learned Counsel appearing for the respondents. It is contended by the learned Government Pleader appearing" for the Respondents 1 and 2 that the action was taken in the public interest and Section 59 empowers the Government to pass the impugned orders. Learned Counsel for the 4th respondent, Sri M.R.K. Chowdary, raised a preliminary objection that what was questioned in the writ petition was not the order of suspension passed by the 1st respondent-Government; but the order passed by the 2nd respondent, which was only a consequential order and the said order of the 2nd respondent, being consequential administrative action, cannot be called in question under Article 226 of the Constitution. This objection, in my view, has no force, The prayer in the writ petition read in conjunction with the allegations made in the writ-affidavit, makes it manifestly clear that what the petitioner was aggrieved by and what was challenged were the orders of the 1st respondent-Government as well as the consequential order of the 2nd respondent. It is significant to note that the 2nd respondent has cancelled the meeting, though the 1st respondent-Government has directed suspension of the meeting on 7-10-1997 and hence the petitioners cannot be said to have no grievance against the said action of the 2nd respondent also. In the circumstances it has to be held that what was questioned in the writ petition are the orders passed by the 1st and 2nd respondents, which resulted in the suspension or cancellation of the meeting convened on 7-10-97.

5. Learned Counsel for the 4th respondent further contends that Section 59 of the Act empowers the Government to cancel any order passed or permit or licence granted or to prohibit doing any act in pursuance of the provisions of the Act, if such action, order etc., are contrary to the provisions of the Act or in excess of the power under the Act or any other enactment and the power is wide enough to take into its purview the convening of a meeting for consideration of No-Confidence Motion. It is however conceded that the said power does not extend to set aside an election.

6. In order to resolve the contentious issue, that is involved in this case, it is but appropriate to notice certain provisions of the Act, particularly, the constitution of Municipality, election of the members of the Council and the disqualification of the members and the provisions dealing with No-Confidence Motion against Vice-Chairperson. Before doing so, let us examine Section 59 of the Act. It occurs in Chapter-IV, which deals with the powers of the Government in controlling, generally, the actions of the Municipalities and it reads thus :

"" 59. Government's Power to Cancel or Suspend Resolutions Etc :

(1) The Government may, either suo motu or onrepresentation of any member, the Chairperson or the Commissioner by order in writing-

(i) cancel any resolution passed, order issued, or licence or permission granted; or

(ii) prohibit the doing of any act which is about to be done or is being done, in pursuance or under colour of this Act, if in their opinion--

(a) such resolution, order, licence, permission or act has not been passed, issued, granted or authorised in accordance with law; or

(b) such resolution, order, licence, permission or act is in excess of the powers conferred by this Act or any other enactment; or

(c) the execution of such resolution, or order, the continuance in force of such licence or permission or the doing of such act is likely to cause financial loss to municipality, danger to human life, health or safety or is likely to lead to a riot or breach of peace or is against public interest :

Provided that the Government shall, before taking action under this section or any of the grounds referred to in clauses (a) and (b), give the authority or person concerned an opportunity for explanation;

Provided further that nothing in this sub-section shall enable the Government to set aside any election which has been held.

(2) If, in the opinion, of the Government, immediate action is necessary or any of the grounds referred to in clause (c) of sub-section (1), they may suspend the resolution, order, licence, permission or act, as the case may be, for such period as they think fit pending the exercise of the powers under sub-section (1)."

7. On an analysis of the Section, I find that the government was given power to cancel any resolution, order passed or licence or permission granted by the Council or any other authority under the Act or prohibiting doing of any act. However, this power can be invoked only in two cases :

(1) To check wholly unauthorised action or the patent illegal exercise of power; and

(2) To prevent loss to the Municipality or to human life etc., and in the public interest.

But before doing so, the Section mandates issuance of notice to the concerned person or authority. Such notice, however, was exempted in cases of urgency viz., immediate danger to human life or any public health etc. This power, however, was expressly restrained from doing any act which would set-aside an election.

8. Sub-section (2) of Section 59 enables, as an interim measure, for suspending the resolution, order etc., for such a period as they think fit pending exercise of power under sub-section (1).

9. It is thus seen that the Government's power is only supervisory in nature conferred to control to Municipalities to act within their bounds and to conform, strictly, to law. Being not in the nature of appellate power, the Government is not entitled to sit in appeal over the orders of the Council or the other authorities. In fact, Chapter-IV makes it clear that the authorities mentioned in the Chapter are only controlling authorities.

10. A cursory review of the provisions of the Act, relevant for our purpose, reveals that the Municipality comprises of Municipal Council, which is the Executive authority of the Municipality, with elected members including, among others, Member of Legislative Assembly and Member of Parliament (Section 5) and the elections to the Council are held under the directions and control of the State Election Commissioner (Section 10A). Section 13A to 17 deal with disqualification of members. Section 14 is relevant for our purpose, under which a person holding office of profit under Municipality, Central or State Government, is disqualified for election. Any member disputing the allegation of disqualification or entertains a doubt about his disqualification is given a right to approach the District Judge of the District in which the Municipality is situated, who shall determine the said question and his decision is final. Pending such decision the Member is entitled to act as if he was not disqualified.

11. The facts in the instant case reveal that the petitioners, who were working in K.T.P.S., (Kothagudem Thermal Power Station) filed their nominations for election as Member of the Municipal Council. Their nominations were objected to on the ground that they were disqualified. However, the objections were rejected and their nominations were held valid. Subsequently, they were elected to the Council. The writ petition, filed questioning their participation in No-Confidence

Motion, also ended in dismissal. The O.P.s filed before the District Judge, Khammam, u/s 17 of the Act, are admittedly pending and as seen supra, pending the O.P.s the petitioners were entitled to act as if they were not disqualified. Nothing is stated in the counter affidavits filed by the respondents to come to any prima facie conclusion that the petitioners were not entitled to participate in the No-Confidence Motion.

12. This brings us to the provisions dealing with No-Confidence Motion : Chapter III enumerates the powers and functions of the Municipal authorities. As per Section 30, the Municipal administration vests in the Council. Section 33 is an important provision as it declares that the acts of the Council shall not be invalidated by any defect in the constitution of the Municipality, such as the disqualification of any member of the Council by reason of any illegality in the election. The Council was given an extra-ordinary power u/s 46, to move No-Confidence Motion against Vice-Chairperson. A special procedure was indicated to move and pass such a motion - under sub-section (2) a notice of intention to move a motion by one half of the sanctioned strength of the Council together with the motion delivered to the District Collector or the R.D.O., as the case may be. Sub-section (3) provides that the District Collector or RD.O.. shall then convene a meeting for the consideration of the motion and give members notice of such meeting. Sub-sections (4) to (11) deal with the conduct of No-Confidence Motion by the District Collector/R.D.O. It is thus clear that upon the delivery of notice of the intention to move the motion by the specified number of members, the District Collector/R.D.O. shall convene a meeting for consideration of the motion and give notice to the members. Subsections (4) and (5) provide two specified contingencies when the meeting can be adjourned. Sub-section (6) categorically mandates that the meeting convened for the purpose of considering a motion shall not, for any other reason, be adjourned. Thus, the District Collector/R.D.O., are restrained from adjourning the meeting for any other reason. Under sub-section (8) no debate on the motion-shall be adjourned. The motion should be put to vote and if the motion is carried, the Vice-Chairperson shall be deemed to have been removed and the result is beyond question in any Court of law. Thus, the procedure is not only special, but also rigorous. All the steps in the procedure are mandatory and great care appears to have been taken by the Legislature to avoid delay or to adjourn the motion, in order to consider and dispose of the No-Confidence Motion most expeditiously. The District Collector or the Government are expressly prohibited from interfering with the procedure or with the decision arrived at in the meeting. Even the Courts' jurisdiction is excluded to decide the validity of the motion Admittedly, upon a notice as per sub-section (2) of Section 46 or the Act, the R.D.O., in accordance with sub-section (3), convened a meeting to be held on 7-10-97, to consider the motion. At this stage, on 6-10-97, one day prior to the date of meeting, the Government suspended the same in public interest, on the representation filed by the 4th respondent, by the impugned order.

13. On considering the conspectus of law and facts, it appears to my mind that

the power of the Government u/s 59 of the Act does not comprehend the power to cancel/suspend or even to postpone the special meeting convened for the purpose of consideration of the no-confidence motion u/s 46 of the Act. As seen supra, the Council which is vested with the administration of the Municipality, has got a prerogative power u/s 46, to move the No-Confidence Motion against Vice-Chairperson. The Legislature, having made expressly clear in various provisions of Section 46 that no authority including the Government should interfere with the consideration and progress of such a meeting and such a motion should come to its conclusion within the statutorily prescribed time, cannot be intended to have invested, in the exercise of the general power of supervision given to the Government u/s 59, with the power to interfere with the meeting convened, even by way of suspension. As noticed above, the Council is administrative authority of the Municipality, whose members are elected. Chairperson and Vice-Chairperson are also elected. All the decisions are taken by majority. Thus, the principle of democratic functioning runs through the administration of Municipality. Specific power is conferred u/s 46 to the members of the Council to move No-Confidence Motion against Vice-Chairperson to unseat him and a special procedure was thought of by the Legislature to consider such motion even keeping away the Court to interfere with the result of the motion. In such a situation, unless an express specific power was conferred upon any other authority, the said power of the Council cannot be curtailed or diluted. It is also important to notice that the R.D.O. is duty bound to convene a meeting, when once a notice under sub-section (1) of Section 46 was given to him. He has no other alternative. The said convening of the meeting therefore by the R.D.O. is consequent upon the issuance of the notice. It cannot be said to be the administrative action of the R.D.O., u/s 46 of the Act. It is a legislative mandate, which the R.D.O. cannot avoid. The No-Confidence Motion being a part of democratic process and scheme of the Act, the Government cannot arrogate to itself the power which was not expressly conferred upon it u/s 59 of the Act.

14. Further, strictly construing the language of Section 59 of the Act, it can be noticed that what the provision speaks of is only resolutions, orders, licences or permissions or acts taken in pursuance of the above or to prohibit the action to be taken in pursuance of the above or any provisions of the Act. Convening of the meeting to consider the No-Confidence Motion and issuing notice to the members under sub-section (3) of Section 46 of the Act can, by no stretch of imagination, be considered as the resolutions, orders, etc. Thus, in view of the above, it has to be held that the power u/s 59 of the Act does not extend to interfere with the meeting and the notice to consider No-Confidence Motion against Vice-Chairperson.

15. The impugned orders are also vitiated for the following reasons :

(1) From the impugned order passed by the Government it is evident that the meeting was suspended on the representations of the 4th respondent alleging that the petitioners are disqualified for the reason that they were working for

profit in A.P.S.E.B. and hence they could not have moved the No-Confidence Motion. As seen supra, the petitioners have filed O.P.s before the District Judge, Khammam, for a decision with regard to their alleged disqualification and the O.P.s are pending. Pending O.P.s., as per Section 17(2) of the Act, they are entitled to act as if they were not disqualified. Thus, there can be no illegality about their participation in the No-Confidence Motion, pending the decision in the O.P.s. u/s 59 the Government cannot take any action under sub-section (1) unless the action of the petitioners was prima facie illegal. No such illegality is discernible nor such a finding is given by the Government in the impugned order.

(2) Secondly, the Government can take action under sub-section (1)(n)(c) of Section 59 of the Act only in cases of impending financial loss to the Municipality or danger to human life, health, etc., and in public interest. The order does not speak of any such loss to the Municipality or threat to human life. The order speaks of only "in the public interest". What do they mean by "public interest"? "Public interest" always should be referable to the preceding expressions under clause (c), viz., in the interest of human life, health or safety or loss to the Municipality or breach of peace. None of these eventualities can be stated to be available to the Government in considering the motion of No-Confidence, that means any action must be always in public interest but not to the benefit of any private person. The only eventuality that was sought to be safeguarded by the Government by suspending the meeting convened for consideration of No-Confidence Motion against the 4th respondent, was only to see that the 4th respondent would continue in office as Vice-Chairperson, which action, in my view, is wholly impermissible.

(3) Lastly under the first proviso to sub-section (1) of Section 59 of the Act, the Government shall have to give an opportunity for explaining the action that is proposed to be taken under the sub-section. No such notice was issued in the instant case. The representations of the 4th respondent were stated to have been made on 20-9-97, 27-9-97 and 29-9-97. The R.D.O. in his proceedings dated 18-9-97 issued notice convening the meeting on 7-10-97. It appears that the 4th respondent immediately approached the Government to cancel the meeting alleging that the petitioners having been disqualified, had participated in the motion. The Government had not immediately acted upon the representations, but waited till 6-10-1997, one day prior to the date of meeting. Hence, it is not difficult to hold that the Government, having sufficient time to hear the petitioners on the representations of the 4th respondent, deliberately did not give any such opportunity. The orders are therefore violative of the above proviso and also contrary to principles of natural justice and arbitrary. Thus in my considered opinion, even holding that the Government has power to act u/s 59 of the Act, I am of the view that the order of the Government is vitiated and is liable to be quashed.

16. For the foregoing reasons the order passed by the Government dated 6-10-1997 and the consequent order passed by the R.D.O. dated 6-10-1997 are

quashed.

17. The R.D.O. is directed to issue fresh notice and to convene the meeting for considering the motion of No-Confidence already given by the petitioners against the 4th respondent, in accordance with subsection (3) of Section 46 of the Act to all the members of the Council and proceed as per law, expeditiously.

18. The writ petition is accordingly allowed. No costs.