

(2015) 08 KAR CK 0030

In the Karnataka High Court

Case No : Writ Petition Nos. 108311, 107206-107210, 107211-213 and
107217-107223/2015 (LB-RES)

Imamjafarkhan and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 25-08-2015

Acts Referred:

Citation : (2015) 08 KAR CK 0030

Hon'ble Judges : Ashok B. Hinchigeri, J.

Bench : Single Bench

Advocate : Sachin S. Magadum, Advocate, for the Appellant; Ravi V. Hosamani, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Ashok B. Hinchigeri, J.—Writ Petition Nos. 107206-210/2015 and 107211-213/2015 are filed raising the challenge to the notice dated 30.06.2015 (Annexure-C) issued by the Commissioner, Haven City Municipal Council, convening the special meeting on 16.07.2015 for considering the "No confidence" motion moved against Sri. Imamjafarkhan, the petitioner in W.P. No. 108311/2015.

2. In the meeting held on 16.07.2015, 26 out of 35 elected members supported the no confidence motion. Pursuant to the said resolution, the Deputy Commissioner has directed the Assistant Commissioner to conduct the election for the purpose of electing the President of Haven City Municipal Council. The said order, dated 4.8.2015 (Annexure-E) is impugned by the outgoing President Imamjafarkhan in W.P. No. 108311/2015.

3. Sri A.S. Paul, learned counsel for the petitioners in W.P. Nos. 107206-210/2015 submits that 13 members of the Municipal Council submitted the notice for convening the special meeting for considering the proposed no confidence motion on 17.06.2015. Under Section 47(2) of the Karnataka

Municipalities Act, 1964 ("the said Act", for short), the special meeting ought to have been convened on or before 02.07.2015. But the meeting is convened on 16.07.2015, which is barred by time.

4. Sri Patil submits that no notice is issued to the petitioner Nos. 5 to 8 on the ground that they are the nominated members and that therefore they are not entitled to vote. In advancing the submission that the nominated members are also entitled to receive the meeting notice, he relies on the two decisions of this Court in the case of Shivamma Vs. The Deputy Commissioner and Others, and in the case of Yashodamma G. and Another Vs. State of Karnataka and Others, .

5. Sri Sachin Magadum, learned counsel for the petitioner in W.P. No. 108311/2015 submits that the passing of the resolution on the no confidence motion is subject to the outcome of W.P. Nos. 107206-107210/2015 and 107211-107213/2015. He would therefore contend that until such time that the said petitions are disposed of, no fresh election could take place to the Office of the Adhyaksha of Haven Municipal Council.

6. Sri Ravi Hosamani, learned Additional Government Advocate appearing for the 1st respondent Government and the 2nd respondent Deputy Commissioner submits that the Adhyaksha of Municipal Council cannot perpetuate himself in power raising the hyper technical grounds.

7. Sri F.V. Patil, learned counsel for the impleading applicants submits that the 7 impleading applicants are the members of the Haven Municipal Council, who have moved the no confidence motion. He submits that the challenge to the impugned notice and the communication cannot be considered in the absence of the impleading applicants. He submits that the petitioner in W.P. No. 108311/2015 who was the President at the time of receiving the notice for convening the meeting, himself has directed that the meeting be convened on 16.07.2015, as is evident from Annexure-R2. He submits that the meeting notice is served on the petitioner No. 8 by muddam, as is evident from Annexure-R3.

8. Sri N.P. Vivek Mehta, learned counsel for the third respondent Municipal Council submits that the no confidence motion proceedings have taken place following the procedure as prescribed by law.

9. The submissions of the learned counsel have received my thoughtful consideration.

10. The impleading applicants are at least proper, if not necessary parties for the adjudication of the issues falling for consideration in this case. Therefore I.A. No. 1/2015 in W.P. Nos. 107206-107210/2015 & 107211-107213/2015 are allowed.

11. The President of the Municipal Council cannot be permitted to be a beneficiary of his own wrongs, if any. If the law requires the President to convene the meeting within fifteen days from the date of receiving the requisition, the President cannot frustrate such a requisition by calling the meeting after the expiry of fifteen days.

12. Be it as it may, unless the petitioners show that they are subjected to prejudice on account of convening the meeting on the 30th day after receiving the requisition, they can not succeed in getting the impugned proceedings quashed.

13. The authorities relied upon by Sri A.S. Patil also do not come to the rescue of the petitioners in any way. The petitioner Nos. 5 to 8 are aware of the convening of the special meeting for considering the no confidence motion. They have challenged the very notice in their petitions. It is also not their case that they were prevented from attending the meeting on the ground that they are not invited to the meeting. It is also worthwhile to notice that out of the four nominated members, three nominated members have attended the special meeting convened for considering the no confidence motion.

14. It is profitable to refer to this Court's decision in the case of Abdul Razak Vs. The Assistant Commissioner, Davanagere Sub-Division and Others, the context of notice of the notice for convening the meeting for moving the no confidence motion against the Adhyaksha of a gram panchayat. It is held therein that the Adhyaksha has no locus standi to challenge the validity of notice on the ground of procedural irregularities and the improper service of notice without a copy of the proposed no-confidence motion. What removes him from office is not the notice but motion against him passed with the requisite majority. Any irregularity in the notice is not required to be enquired into at the instance of Adhyaksha.

15. In the case of Shri Venkataram, Adyaksha Madderi Gramapanchayat and Shri Yalagappa Vs. Assistant Commissioner, , it is held that the notice envisaged for moving no-confidence motion is directory in nature and the violation of the same does not vitiate the proceedings. If the Adhyaksha has lost the confidence of the members, he cannot function as Adhyaksha.

16. In the case of Manjula Vs. State of Karnataka, it is held that a sitting president has no locus standi to maintain the writ petition on the grounds of violation or non-compliance of the requirements of the Rules.

17. Similarly, the other members of the Municipal Council have also no locus standi to question the no-confidence motion moved against the Adhyaksha; the other members cannot be treated as the aggrieved persons. If they are not in favour of the no-confidence motion, they can always cast their votes against it. Instead of doing so, they have approached this Court which is wholly unwarranted. In saying so, I am fortified by this Court's decision in the case of Fakirappa Durgappa Harijan Vs. Assistant Commissioner, Gadag Sub-Division and Another, .

18. It is also worthwhile to refer to the Division Bench's judgment in the case of Munirathnamma Vs. The Asst. Commissioner, Kolar Sub-Division and The Secretary, Government of Karnataka, Department of Panchayat Raj, wherein it is held that the writ petition challenging the validity of notice and the no-confidence resolution on the ground that the notice actually served on the

members was short by one day of the minimum prescribed period, is not maintainable. It is further held therein that the Court cannot reinstate Adhyaksha removed from the office by a democratic process.

19. No arguments whatsoever are addressed in W.P. Nos. 107217-107223/2015 perhaps in the wake of the submissions made in the other two batch of petitions.

20. For all the aforesaid reasons, I decline to interfere in the matter. All these writ petitions are dismissed.

21. Now that the main matter itself is disposed of, I.A. Nos. 2/2015 and 3/2015 in W.P. Nos. 107206-107210/2015 & 107211-107213/2015 are dismissed as having become unnecessary.

22. No order as to costs.