
(2020) 12 TEL CK 0003
In the Telangana High Court
Case No : Writ Petition No. 16607 Of 2020

J. Ramakrishna

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 04-12-2020

Acts Referred:

Cantonments Act, 2006 — Section 14, 39, 39(1), 39(2)

Citation : (2020) 12 TEL CK 0003

Hon'ble Judges : Challa Kodanda Ram, J

Bench : Single Bench

Advocate : M. Rambabu, G. Shankar Prasad, K.R. Koteswara Rao

Final Decision : Allowed

Judgement

In this Writ Petition, petitioner challenges the No Confidence Motion dated 21.09.2020 moved by the elected Board members.

The petitioner was an elected member of respondent No.3 - Secunderabad Cantonment Board, Secunderabad, (hereinafter referred to as

the Board) and the term of Office is from 2015 to 2020. As a matter of fact, by 10.02.2020, the term of Office of the elected body

expired. However, by virtue of extension granted by respondent No.1 - Union of India, Ministry of Defence, New Delhi, in exercise of the

powers conferred under Section 14 of the Cantonments Act, 2006 (for short the Act), initially, the term of office of the elected body

was extended by six (6) months. Thereafter, the same was extended till February, 2021. While the things stood thus, majority of the elected

members submitted a requisition to the President on 21.09.2020 to call for a meeting to consider the no confidence motion against the

petitioner. It was the allegation of the petitioner that such requisition was

presented to the President at 2:30 p.m., and at 4:30 p.m., the President has taken a decision to convene such meeting on 22.09.2020 at 10:30 a.m. Such meeting was in fact, convened and out of 8 members, 7 members expressed no confidence with respect to the petitioner. It is the assertion of the petitioner that the motion passed against him is illogical, as such, the same is liable to be set aside.

Sri M. Rambabu, learned counsel appearing for the petitioner, submits that inasmuch as the procedure governing "no confidence motion" has no application with respect to the extended term of Office, in particular, in terms of the first proviso to Section 14, the term of Office is extended for one year and on account of the second proviso thereof, extended term of office shall cease to hold office till the notification is issued for electing the Members. The procedure governing the removal of the members/conducting no confidence proceedings has no application to this case, as, extension of the term of Office of the elected Members is made on ad hoc basis. He also submits that as per the Regulations of the Board, with respect to the convening of the meeting for moving no-confidence motion, in 4 working days, notice be given for ordinary meetings and that in 2018, in similar circumstances, the Board had given four (4) days notice for initiating no confidence motion, whereas, in the present case, the notice is dated 21.09.2020 and the meeting was convened on 22.09.2020, thereby, there is violation of the mandatory requirement of issuance of notice. Assuming that the shorter notice could be issued by the President, the requirements itself stipulate 24 hours notice is to be given and for convening the special Board meeting, the requisition itself was given by the contesting respondents at 2:30 p.m. and the decision was taken by the President at 4:30 p.m., and as a matter of fact, the petitioner raised an objection with respect to the procedure being followed by giving a letter dated 21.09.2020, thereby, the requirement of 24 hours is not satisfied. In the circumstances, he prays for setting aside the notice issued for moving no confidence motion against the petitioner.

Sri G. Shankar Prasad, learned counsel appearing for Sri K.R. Koteswara Rao, learned Standing Counsel appearing for the Board, who was unable to represent the matter on account of his ill-health, would submit that in

similar circumstances, Allahabad High Court vide judgment dated 25.02.1988 in R.P. Dhayani v. The President Cantonment Board, Lansdowne 1988(2) UPLBEC 132 6dismissed the Civil Misc Writ Petition No.18359 of 1986. He would further submit that the conduct of the petitioner is required to be taken into consideration and it is on account of certain omissions and commissions of the petitioner, â??no confidence motionâ?? was moved and the same was carried out unanimously by following the procedure scrupulously and the petitioner having not succeeded in the no confidence motion, interference by this Court is not called for.

Learned counsel appearing for respondent No.4 while drawing the attention of this Court to Section 39 of the Act, had made an effort to make a distinction between Sections 39(1) and 39(2) of the Act. He contends that while Section 39(1) speaks about conducting of general meeting within the timeframe, Section 39(2) gives the authority to the President to convene a special meeting, whenever he thinks fit, subject to the condition that a requisition was received by not less than 1/4th of the members of the Board. In this context, learned counsel would contend that there is no requirement of fixing any timeframe for a special meeting to be called for, thereby, the special meeting was called for and the petitioner himself participated and resolution of no confidence motion was passed unanimously. Therefore, such decision does not call for any interference by this Court in exercise of its extraordinary jurisdiction under Article 226.

The facts are not in dispute.

At the outset, it may be noted that it is the specific pleading of the petitioner in paragraphs 8 and 9 of the writ affidavit that the requisition was given at 2:30 p.m. on 21.09.2020 by the contesting respondents and at about 4:30 p.m., the Agenda has been circulated fixing the date as 22.09.2020 at 10:30 a.m. for special Board meeting for consideration of no confidence motion. This was not specifically denied by the respondents. This becomes important on account of the fact that the Regulations, which are admittedly followed by the Board, were originally notified under the Repealed Cantonments Act, 1924. Under Regulation 2, the requirement of issuance of notice to the Member not less than 4

days for convening ordinary meeting and not less than 24 hours in advance in the case of convening the special meeting. The same is required

to be taken note of. However, the said Regulation reads as under:

2. Notice of Meeting:

1. A written notice in English of every meeting, whether ordinary or special, specifying the hour and date of meeting along with the business to

be transacted at the meeting shall be issued by the Executive Officer so as to reach every member not less than four days before the date of

an Ordinary Board Meeting and not less than 24 hours in advance in the case of Special Board Meeting.

The language employed in Regulation 2 is with respect to the convening of the special meeting in not less than 24 hours, which emphasizes

that a minimum of 24 hours advance notice is required to be issued.

In the case on hand, in the absence of specific denial by the respondents, the specific averments in the writ affidavit that the requisition was

issued on 21.09.2020 at 2:30 p.m. and the Agenda was circulated at 4:30 p.m. and considering the fact that the meeting was fixed at 10:30

a.m. on the next day, this Court finds that requirement of issuance of 24 hours notice, as mandated in Regulation 2, has been followed and on

this simple technical ground, this Writ Petition requires to be allowed.

The argument of the learned counsel for the petitioner that the procedure of moving no confidence motion has no application in the cases of

extension of office on ad hoc basis, has no legal standing, inasmuch as once the term is extended, in all respects, the provisions of the Act,

Rules, Regulations would govern the affairs of the Board, as otherwise, it would lead to chaos, leaving it open for the parties to carryout the

affairs of the Board, as they please. It cannot be presumed that the intention of the second proviso to Section 14 of the Act is to leave it open

to the Members of the Board to act as they wish.

From a close reading of the judgment of Allahabad High Court in R.P. Dhayani (supra), it is clear that in the said case, stipulation of 24 hours

time was in fact complied with. The contention, which has been rejected therein, was not in relation to the non-compliance of 24 hours notice

but with respect to the petitioner himself not availing the opportunity. The same would be clear from a conjoint reading of paragraphs 5, 7, 10

and 11. As per the said judgment, the requisition was given in the said case at 10:30 a.m. on 21.09.1986 and the same was served on the son

of the petitioner therein at 11:00 a.m. and the meeting was convened on 22.09.2020 at 12:00 noon, thereby, satisfying the 24 hours notice. The

other observations with respect to the discretion to be exercised does not bind this Court for the reason that this Court had repeatedly held that

if an Act requires to be done in a particular manner, the same is required to be done as prescribed in law or not at all.

In those circumstances, this Court is expressing respectful disagreement with the judgment of Allahabad High Court in R.P. Dhayani (supra).

In the result, this Writ Petition is allowed. However, it is left open to the respondents to take action in accordance with law, by duly following

the procedure prescribed.

Miscellaneous applications, if any pending, shall stand disposed of. There shall be no order as to costs.