
(2003) 09 AP CK 0062

In the Andhra Pradesh High Court

Case No : Writ Petition No. 18794 of 2003

Konda Bhagyalaxmi

APPELLANT

Vs

District Collector (PR) and Others

RESPONDENT

Date of Decision : 05-09-2003

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 245
Constitution of India, 1950 — Article 226

Citation : (2003) 6 ALD 63 : (2004) 1 APLJ 217

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : S. Satyam Reddy, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—This writ petition raises an interesting question-whether the Mandal President can take preemptive action prohibiting the other members of the Mandal Parishad from moving a no confidence motion against her.

2. Section 245 of the A.P. Panchayat Raj Act, 1994 ("the Act" for brevity) deals with motion of no confidence in Upa-Sarpanch, President or Chairman. The same reads as under:

Motion of No Confidence in Upa-Sarpanch, President or Chairman :--(1) A motion expressing want of confidence in the Upa-Sarpanch or President or Vice-President or Chairman or Vice-Chairman may be made by giving a written notice of intention to move the motion in such form and to such authority as may be prescribed, signed by not less than one-half of the total number of members of the Gram Panchayat, Mandal Parishad, or as the case may be the Zilla Parishad and further action on such notice, shall be taken in accordance with the procedure prescribed:

Provided that no notice of motion under this section shall be made within two

years of the date of assumption of office by the person against whom the motion is sought to be moved;

Provided further that no such notice shall be made against the same person more than once during his term of office.

Explanation :--For the removal of doubts, it is hereby declared that for the purpose of this section the expression "total number of members" means, all the members who are entitled to vote in the election to the office concerned inclusive of the Sarpanch, President or Chairman but irrespective of any vacancy existing in the office of such members at the time of meeting:

Provided that a suspended office-bearer or member shall also be taken into consideration for computing the total number of members and he shall also be entitled to vote in a meeting held under this section.

(2) If the motion is carried with the support of two-thirds of the total number of members in the case of a Upa-Sarpanch, the Commissioner shall and in the case of the President or Vice-President or the Chairman or Vice-Chairman, the Government shall by notification remove him from office and the resulting vacancy shall be filled in the same manner as a casual vacancy.

3. More than half of the members can give notice of intention to move a motion to express no confidence in Upa-Sarpanch, Sarpanch or Chairman, as the case may be, and such notice has to be dealt with in accordance with rules prescribed by the Government in G.O. Ms. No. 200 dated 28.4.2003 i.e., Rules relating to motion of no-confidence in Upa-Sarpanch of Gram Panchayat, President or Vice-President of Mandal Parishad or Vice-Chairman/ Chairman of Zilla Parishad. The first proviso to Sub-section (1) of Section 245 provides that a notice of motion to express no confidence as contemplated under Sub-section (1) shall not be made within two years from the date of assumption of office by the person against whom such motion is moved. Second proviso says that the notice of no confidence motion shall be moved only once during the term of his office. That is to say, the legislature provides that only one opportunity to more than half members to move a motion of no confidence against Upa-Sarpanch, President or Chairman, as the case may be, and when once such motion is moved and assuming such motion is defeated by majority of members in the meeting convened for the purpose in accordance with Rule 3 of the Rules, no motion of confidence can be moved. The Legislature intending to impose a check on the abuse of power by the elected member has taken care that democracy, at the grass root level, is not subverted by repeated attempts to move a motion of no confidence against an elected member. This provision is being misused is the contention raised in this writ petition.

4. Respondent No. 3 was elected as the President of the Karimnagar Mandal Parishad. It appears the Respondents 4 to 12 gave a notice of motion under Rule 2 of the Rules requesting the Revenue Divisional Officer, Karimnagar, the second respondent herein to convene the meeting. The second respondent already

issued a notice in Form-V as required under Rule 2 and convened a meeting to be held on 11.9.2003 at 11 a.m. to consider the proposed motion to express no confidence in the third respondent. It is not known whether respondents 5 to 12 have issued notice as required u/s 245(1) at the behest of the third respondent or not.

5. The petitioner alleges that the third respondent, who is behind the notice of no confidence against her, took the advantage of proviso to Section 245(1) and has now kept all of them at her residence. Therefore, she seeks a direction to the respondents 4 to 12 to attend the no confidence motion. According to the learned Counsel for the petitioner Sri Satyam Reddy, if the third respondent is allowed to defeat motion of no confidence proposed by respondents 4 to 12, it would amount to abuse of Section 245(1) of the Act. He also placed reliance on the decision rendered by me in P. Ramachandraiah Vs. Government of A.P. Panchayat Raj, Secretariat, Hyderabad and others, , wherein I held that when once notice of no confidence is issued, the same cannot be withdrawn as there is no such specific provision in the Act or the rules unlike in the case of business rules of Parliament or business rules of Legislative Assembly.

6. A direction sought is against respondents 4 to 12, who are no doubt are members of M.P.T.C. discharging their duties under a statute in relation to public duties entrusted to other officers and President. By themselves they cannot be treated as public authorities for the Act or the rules framed thereunder do not entrust any specific duty to be discharged by the members of the Mandal Parishad Territorial Constituency. Therefore, they cannot be termed as "State" and no writ can lie against them. This Court, much less the Civil Court, cannot give mandatory injunction directing them to attend the meeting convened at their behest to move motion of no confidence.

7. Secondly, in my considered opinion, the third respondent, even if she is instrumental in asking respondents 4 to 12 giving a notice of motion, cannot be said to have abused the provisions u/s 245(1). There are instances where the meeting is convened to express no confidence and presumably for change of attitude the same members who moved such motion voted against it. When we cannot term such a situation as illegal, for the same reason if action taken by the third respondent to prevent any further motion of no confidence cannot be treated as abuse of process to law. The writ petition is misconceived. It is accordingly dismissed. No costs.