

**(2002) 02 AP CK 0090**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No's. 25657 and 27051 of 2001**

K.V. Subrahmanayam and Others

APPELLANT

Vs

Joint Collector, Cuddapah and Others

RESPONDENT

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**Date of Decision : 12-02-2002**

**Acts Referred:**

Andhra Pradesh District Collectors Powers (Delegation) Act, 1961 — Section 3

Andhra Pradesh General Clauses Act, 1891 — Section 3

Andhra Pradesh Municipalities Act, 1965 — Section 46, 46(10), 46(11), 46(12), 46(2)

**Citation : (2002) 2 ALD 357**

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

**Bench : Single Bench**

**Advocate : P. Veera Reddy, for the Appellant; Gummala Vijay Kumar, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

V.V.S. Rao, J.—The parties shall be referred to, as arrayed in W.P. No. 25657 of 2001.

2. Both the writ petitions are concerned with the motion of No-Confidence against the Vice-Chairman of Proddatur Municipal Council, who is the 1st petitioner in W.P. No. 25657 of 2001 and the only petitioner in W.P. No. 27051 of 2001. W.P. No. 25657 of 2001 is filed challenging the notice dated 3-12-2001, issued by the 1st respondent-Joint Collector, and whereas W.P. No. 27051 of 2001, is filed questioning the legality and propriety of the method and manner in which the meeting was conducted by the Joint Collector on 22-12-2001. Since the submissions in the vacate stay application and the main writ petitions are substantially the same, and the questions that arise for adjudication are also common, with the consent of the learned counsel for the respective parties, the writ petitions itself were heard finally and are being disposed of by this common order.

3. Elections to Municipal Council, Proddatur, were held in February-March, 2000.

The 1st petitioner was elected as Vice-Chairman on 12-4-2000, and he assumed Office on the same day. According to him, on 8-12-2001, the 3rd petitioner received the impugned notice dated 3-12-2001, inter alia informing her that the majority of the Councillors proposed a motion of No-Confidence against the 1st petitioner, and called upon her to attend the meeting scheduled to be held on 22-12-2001 at 11-00 A.M. in the Meeting Hall of Proddatur Municipal Council.

4. On 19-12-2001, this Court while ordering notice before admission directed that the result of the meeting to be held on 22-12-2001 shall not be announced until further orders. Accordingly, the meeting was held, but the result was not declared.

5. Five Councillors who are signatories to the notice of intention have filed two applications in W.P. No. 25657 of 2001 - one application being W.P.M.P. No. 1215 of 2002 for impleading them as respondents 4 to 8, which is ordered, and the other application being W.V.M.P. No. 93 of 2002 for vacating the interim order granted by this Court on 19-12-2001.

6. Sri. P. Veera Reddy, the learned counsel appearing on behalf of the petitioners raised the following submissions:

(i) The notice of intention which has put the procedure in motion was not in accordance with sub-section (2) of Section 46 of the A.P. Municipalities Act, 1965 (for short "the Act") in that, when the total sanctioned strength of the Municipal Council is 39, only 19 Councillors signed the notice of intention for moving the motion expressing want of confidence;

(ii) The signature of the 3rd petitioner Smt. Susheelamma was forged on the notice of intention;

(iii) The 1st respondent-Joint Collector, who received and issued the notice of intention is not competent under the provisions of the Act to issue such a notice;

(iv) The motion of No-Confidence was not enclosed to the notice of intention, and as required u/s 46(3) of the Act, 15 clear days of such meeting, was not given before convening the meeting for considering the motion of No-Confidence;

Apart from the above submissions, the learned counsel submitted that the whole proceedings during the course of the meeting were not initiated for the reason that no debate, as required under sub-section (7) of Section 46 of the Act, was allowed. Though initially the Joint Collector prescribed the voting by secret ballot, the same was given a go by, and the members present during the meeting voted by show of their hands. The minutes of the whole proceedings was not properly drafted. Instead of drafting the minutes immediately after the proceedings, they were drafted in the evening of 22-12-2001 in the Chambers of the Municipal Commissioner. He further submitted that the 1st respondent-Joint Collector is not competent to preside over the meeting.

7. The 1st respondent-Joint Collector filed a detailed counter on the basis of the

records, which were produced before this Court. the allegations made by the petitioners in the writ petition have been met. It is stated that by reason of the Notification issued vide G.O. Ms. No. 77, Revenue, dated 22-1-1968, the Government in exercise of its powers u/s 3 of the A.P. District Collector's Powers (Delegation) Act, 1961 (for short "the Delegation Act"), delegated the powers of the District Collector to the Joint Collector. For the purposes of Section 46 of the Act, the Joint Collector shall be deemed to be the Collector. The notice of intention was signed by 20 members. The signature of the 3rd petitioner, as alleged, was not found in the notice of intention. The notice was served on one of the adult family members of the 3rd petitioner on 4-12-2001, and therefore, the requirement of Section 46(3) of the Act of giving 15 days clear days of such meeting is satisfied. It is also stated that on the date of the meeting though the Joint Collector invited the members present to have a debate on the motion, no member came forward. All the members present opted for the system of voting by showing of hands instead of voting by secret ballot, and therefore, voting was conducted by show of hands. Since this Court ordered not to announce the result of the meeting, the minutes of the meeting were not divulged and are kept in abeyance.

8. In the background of these facts, two questions arise for consideration of this Court. They are - (i) Whether the Joint Collector was competent under law to receive and issue the notice of intention and preside over the meeting for expressing want of confidence in the Vice-Chairman? and (ii) Whether the meeting conducted is improper and contrary to the provisions of the Act?

(i) Whether the Joint Collector was competent under law to receive and issue the notice of intention and preside over the meeting for expressing want of confidence in the Vice-Chairman?

9. Section 46(2) of the Act enables a written notice of intention to be made by not less than one-half of the sanctioned strength of the Council to the District Collector in the case of special or selection grade Municipality, or to the Revenue Divisional Officer in the case of any other Municipality. All other sub-sections of Section 46 of the Act mention that the District Collector or the Revenue Divisional Officer shall preside over and conduct the meeting as well as publish the result of the meeting expressing want of confidence.

10. The Act does not define "District Collector". In such a situation, the only alternative is to fall back upon the definition given in the A.P. General Clauses Act, 1891. Section 3 thereof categorically states that under the said Act as well as in every Act of the State of A.P., unless there be something repugnant, the definitions given under the said Section, shall apply. Sub-section (6) of Section 3 defines "Collector" as including every officer, who is authorized to exercise the powers of the Collector. Insofar as this aspect of the matter is concerned, the State of Andhra Pradesh has enacted A.P. District Collector's Powers (Delegation) Act, 1961. The statement of objects and reasons shows that so as to enable the District Collector to devote adequate attention to the developmental activities

and to relieve them from routine duties cast on them under various State enactments, the Government appointed the Joint Collectors to attend to the duties of the District Collectors under various enactments. The Act was made so as to complete the formalities with regard to the Notifications to be issued by the Government delegating the powers of the District Collector to the Joint Collectors and other officers, which was sought to be done by a legislative enactment.

11. Section 3, thereof empowers the State Government by notification in the A.P. Gazette to authorize any Joint Collector or any other officer of the State Government not below the rank of Deputy Collector to exercise "all or any powers vested by or under any law in the District Collector". Accordingly, in exercise of such power, the Government issued Notification in G.O. Ms. No. 77, Revenue, dated 22-1-1968, which was amended from time to time. Appendix - I to the said G.O. distributes/reserves various subjects to the District Collector, Joint Collector, Personal Assistants to Collector, and Appendix - II to the said G.O. further delegates the powers of the District Collector under various laws mentioned therein to the Joint Collectors. The enforcement of A.P. Municipalities Act, 1965 finds place in the subjects reserved for the Joint Collector. Thus, the powers exercisable by the District Collector under the Act are now delegated to the Joint Collector by virtue of Appendices I - II to the Notification issued in the said G.O.

12. A reading of the provisions of Section 46 of the Act, Section 3(6) of the General Clauses Act as well as the Notification issued by the Government in G.O. Ms. No. 77, Revenue, Dated 22-1-1968, would make it clear that the District Collector, mentioned in sub-sections (2), (3), (4), (5), (7), (10), (11) and (12) of Section 46 of the Act, would include the Joint Collector as well. The 1st respondent-Joint Collector, is therefore, competent to receive and issue the notice of intention u/s 46(2) of the Act and also to preside over the meeting under sub-section (4) thereof.

ii) Whether the meeting conducted is improper and contrary to the provisions of the Act?

13. The question of service of notice by not less than one-half of the sanctioned strength of the Council, the question of issuing notice of the meeting giving not less than 15 clear days of such meeting, and the question of quorum during the meeting are all questions of fact. These facts, which are brought on record by way of counter-affidavit by the Joint Collector, are supported by documents contained in File No. E-IV/99/-1, which was produced before this Court. Though dispute is raised as to whether the notice of the meeting was served on the 3rd petitioner on 4-12-2001 or 8-12-2001, this Court is not inclined to go into the said question having regard to the fact that the record produced before the Court, discloses that the notice of the meeting was served on the 3rd petitioner on 4-12-2001 itself.

14. Insofar as the contention of the petitioners that voting was not done by

secret ballot, is concerned, the same is no more res integra. It is competent for the Presiding Officer to allow voting by show of hands. This question came up for consideration before a Division Bench of this Court as far back as in the year 1984 in *G. Narayana Swamy v. Govt. of A.P.*<sup>1</sup> The Division Bench of this Court (Coram: Chief Justice Ramachandra Rao and Justice P. Rama Rao) while interpreting the words "motion shall be put to vote" appearing in sub-section (9) of Section 46 of the Act, held:

It is patent from the provisions of the A.P. Municipalities Act that the modalities for election of Chairman and Vice-Chairman and no-confidence motion envisage a different and distinct bearing. Insofar as the election, the voting by secret ballot alone is postulated. In the context of set up of Section 46, similar connotation cannot be attributed to the expression "put to vote". The expression "put to vote" comprises wide coverage taking in its fold show of hands and secret ballot as well... The Collector or the Revenue Divisional Officer is obligated to convene the meeting for consideration of the no-confidence motion within one month from the date of the written notice... The mode of voting by ballot is time consuming process as ballot papers have to be printed and furnished to each of the voters and ballot boxes have to be arranged and after the votes are exercised the ballot boxes have to be opened and votes counted and the result declared thereafter. Section 46 provides a self-contained procedure whereby the expression of no-confidence is expected to be finalized within a short time and the voting by show of hands contributes to expedition.

15. In *K. Chandra Shekar v. Government. of A.P.*<sup>2</sup>, while dealing with the method and manner in which voting should be conducted in a Gram Sabha under the provisions of the A.P. Gram Panchayats Act, 1994, I have held:

...Election by raising hands is well accepted method of democratic process adopted even in the highest legislative bodies as well as the international bodies like the United Nations Organization and its organs. There cannot be any arbitrariness by the method adopted for approving the Village Committee by raising hands. As long as the muscle men are kept at bay by the Nodal Officer, there cannot be any objection for the villagers of Gram Sabha to approve the Village Sanitation Committee by raising hands. Any other method, in my considered opinion, would be contrary to the very scheme itself, the object of which is noticed hereinabove. In every democratic method of functioning, the secret ballot is not the only way of practicing democracy.

16. In view of the settled legal position, I hold that voting by show of hands by the Councillors in the meeting held on 22-12-2001, cannot by itself vitiate the motion of expression of want of confidence in the Vice-Chairman.

17. Sri. Veera Reddy, the learned counsel for the petitioners, however, submits that the 1st respondent-Joint Collector having made necessary arrangements for the polling by printing ballot papers and arranging a booth for the polling, ought to have conducted the voting by secret ballot than the conducting the voting by

show of hands by the Councillors to express the No-Confidence. Section 46(9) of the Act obliges the Presiding Officer to put the motion to vote after conclusion of the debate or on the expiry of the period of two hours. There was no obligation on the part of the Joint Collector to necessarily go in for secret ballot. In such circumstances, the preparations, if any, made by the Joint Collector for the polling by printing ballot papers and arranging a booth for polling, will not in any way take away the discretion vested in the Joint Collector, under sub-section (9) of Section 46 of the Act.

18. In the result, both the writ petitions fail, and they are accordingly dismissed. The interim order shall stand vacated, and there shall be no order as to costs.