
(2001) 08 KAR CK 0078

In the Karnataka High Court

Case No : Writ Appeal No's. 4366 and 4367 of 2001

M. Puttegowda and Another

APPELLANT

Vs

The Assistant Commissioner, Mysore

RESPONDENT

Date of Decision : 06-08-2001

Acts Referred:

Karnataka Panchayat Raj Act, 1993 — Section 49

Citation : (2002) 1 KarLJ 16

Hon'ble Judges : Chidananda Ullal, J; Ashok Bhan, J

Bench : Division Bench

Advocate : A. Nagarajappa, for the Appellant;

Final Decision : Dismissed

Judgement

1. Appellants being aggrieved by the order of the Single Judge dismissing their writ petitions thereby upholding the notice for considering the no-confidence motion submitted by the members of the Panchayat in the meeting scheduled to be held on 7th of August, 2001, have come up in these appeals.

2. Shortly stated the facts are:

Appellants were elected as members of the Bhogadi Gram Panchayat from their respective constituencies. Appellant 1 was elected unopposed for the post of Adhyaksha and appellant 2 was elected as Vice-President in accordance with the provisions of the Karnataka Panchayat Raj Act, 1993 (for short, "the Act") and the Rules framed thereunder. The election was held on 21st of March, 2000. The term of the office was to come to an end somewhere in the end of the year 2002,

3. On 10-3-2001 more than 1/3rd of the total number of members of the Panchayat gave a notice for calling a meeting for considering the no-confidence motion against the appellants to the Assistant Commissioner, Mysore Sub-Division, Mysore (for short, "the respondent"). Respondent issued a notice on 12th of July, 2001 convening a meeting for considering the motion on 7th of August, 2001 in the office of the Bhogadi Gram Panchayat.

4. Appellants filed the writ petitions challenging the notice issued by the respondent dated 12th of July, 2001 convening the meeting of the Gram Panchayat for considering the vote of no-confidence for 7th of August, 2001 on the ground that the notice for convening the meeting had been issued in violation of the first proviso to Section 49 of the Act and Rule 3 of the Karnataka Panchayat Raj (Motion of No-confidence against Adhyaksha and Upadhyaksha of Gram Panchayat) Rules, 1994 (for short, "the Rules").

5. Before advertng to the contentions raised by the Counsel for the appellant it would be useful and relevant to refer to the statutory provisions of the Act and the Rules. Section 49 reads:

"49. Motion of no-confidence against Adhyaksha or Upadhyaksha of Gram Panchayat.--Every Adhyaksha or Upadhyaksha of Gram Panchayat shall forthwith be deemed to have vacated his office if a resolution expressing want of confidence in him is passed by a majority of not less than two-thirds of the total number of members of the Gram Panchayat at a meeting specially convened for the purpose in accordance with the procedure as may be prescribed:

Provided that no such resolution shall be moved unless notice of the resolution is signed by not less than one-third of the total number of members and at least ten days notice has been given of the intention to move the resolution:

Provided further that no resolution expressing want of confidence against an Adhyaksha or Upadhyaksha, shall be moved within one year from the date of his election:

Provided also that where a resolution expressing want of confidence in any Adhyaksha or Upadhyaksha has been considered and negatived by a Gram Panchayat a similar resolution in respect of the same Adhyaksha or Upadhyaksha shall not be given notice of, or moved, within one year from the date of the decision of the Gram Panchayat".

Relevant portion of Rule 3 reads:

"3. Motion of no-confidence.--(1) A written notice of intention to make the motion under the proviso to Section 49 shall be in Form I signed by not less than one-third of the total number of members together with a copy of the proposed motion shall be delivered in person by any two of the members signing the notice to the Assistant Commissioner.

(2) The Assistant Commissioner shall thereafter convene a meeting for the consideration of the said motion at the office of the Gram Panchayat on the date appointed by him which shall not be later than thirty days from the date on which the notice under Sub-rule (1) was delivered to him. He shall give to the members a notice of not less than fifteen clear days of such meeting in Form II:

Provided that where the holding of such meeting is stayed by an order of a Court, the Assistant Commissioner shall adjourn the said meeting and shall hold

the adjourned meeting on a date not later than thirty days from the date on which he receives the intimation about the vacation of stay, after giving to the members a notice of not less than fifteen clear days of such adjourned meeting.

(3) A notice in Form II shall be given to every member including the Adhyaksha and Upadhyaksha.-

(a) by delivering or tendering the said notice to such member; or

(b) if such member is not found, by leaving such notice at his last known place of residence or business within the Gram Panchayat or by giving or tendering the same to some adult member or servant of his family; or

(c) by registered post; or

(d) if none of the means aforesaid be available, by affixing such notice on some conspicuous part of the house, if any, in which the member is known to have last resided or carried on business within the Gram Panchayat.

(4) The quorum for such meeting shall be two-thirds of the total number of members of the Gram Panchayat. The Assistant Commissioner shall preside at such meeting".

6. Before the Single Judge, the following three contentions were raised:

(i) That the issuance of impugned notice Annexure-A was in contravention of the first proviso to Section 49 of the Act as respondent did not wait till the expiry of 10 days from the date of receipt of notice of the no-confidence motion submitted by the members of the Gram Panchayat;

(ii) That the notice was not in conformity with Rule 3(3) of the Rules.

(iii) Non-supply of the certified copy of the notice of no-confidence motion submitted by the members of the Gram Panchayat in spite of the application submitted by the appellants to the respondent.

Learned Single Judge negated all the three contentions raised before him and held that the limit of 10 days provided under the first proviso to Section 49 read with Rule 3(2) of the Rules is the outer limit for calling a meeting to consider the motion of no-confidence and the respondent was not required to wait till the expiry of 10 days before convening the meeting as was contended by the appellants. That there was a clear notice of 15 days from the date of issue of the notice till the date of meeting which is to be held on 7th of August, 2001. Challenge to the notice that it was in contravention of Rule 3(3) was negated. That non-furnishing of the certified copy of the notice of no-confidence submitted by the members of the Panchayat to the appellants was irrelevant and immaterial for considering the motion of no-confidence.

7. Counsel for the appellant has confined his argument on the first two points before us. We do not find merit in either of the contentions raised before us for the following reasons.

8. First proviso to Section 49 is in two parts, (i) that no resolution shall be moved unless the notice of resolution is signed by not less than 1/3rd of the total number of members, and (ii) at least 10 days notice of the intention to move the resolution is given. Rule 3(1) provides that a written notice of the intention to make the motion of no-confidence under proviso to Section 49 shall be in Form I signed by not less than 1/3rd of the total number of members delivered to the Assistant Commissioner with a copy of the proposed motion by any of the two members signing the notice. The Assistant Commissioner thereafter has to convene the meeting for considering the said motion at the office of Gram Panchayat on a date appointed by him which shall not be later than 30 days from the date on which the notice under Sub-rule (1) was delivered to him by giving a notice of not less than 15 clear days of such meeting in Form II. From the combined reading of proviso to Section 49 and the Rules it is clear that the persons who intend to move the no-confident motion shall give atleast 10 days notice to the Assistant Commissioner for convening the meeting. It would not come in the way of the Assistant Commissioner to call for the meeting to consider the motion for no-confidence before the expiry of 10 days from the date he received the notice. The Assistant Commissioner can call the meeting within 10 days from the date he received the notice. He is not required to wait for the expiry of 10 days before issuing the notice convening the meeting. Thus there is no substance in the first submission made by the Counsel for the appellants. A Single Judge of this Court in Smt. Parvathi Vs. The Assistant Commissioner, Haveri Sub-Division, Haveri and Another, , has taken the same view. The Single Judge negatived the similar contention raised on behalf of the petitioners in the said case by observing thus:

"From the reading of the rules with the proviso to Section 49 of the Act, it is clear that the persons who intend to move the no-confidence shall give at least ten days notice to the Assistant Commissioner. This ten days notice to the Assistant Commissioner will not come in the way of the Assistant Commissioner to call for the meeting to consider the motion of no-confidence before the expiry of 10 days from the date he received the notice. Therefore, I find no substance in the contention of the learned Counsel for the petitioner".

We subscribe to the above view.

9. The second attack must also fail for the reason that the meeting had been convened within 30 days from the date of the receipt of the notice by 1/3rd of the total number of members of the Gram Panchayat expressing their no-confidence against Adhyaksha and Upadhyaksha. There was a clear gap of 15 days between the date on which the notice was issued and the date for which the meeting was convened.

10. No other point is raised.

11. For the reasons stated above, we do not find any merit in these appeals and dismiss the same with no order as to costs.