

(1982) 03 KAPT CK 0022
In the Karnataka Appellate Tribunal
Case No : Rev. Petn. 139/81 (VPBGM)

Mahadeva Gowda

APPELLANT

Vs

Hirehonni-halli Group Panchayat Committee and Others

RESPONDENT

Date of Decision : 16-03-1982

Acts Referred:

Karnataka Village Panchayat and Local Boards Act, 1959 — Section 32

Citation : (1982) 1 KarLJ 68

Hon'ble Judges : B. H. Hanumantharaju, Member; K. V. Narayana Raju, J

Judgement

Per K.V. Narayana Raju, M.-This revision petition under S. 207 of the Karnataka Village Panchayats and Local Boards Act is directed against the order dated 30-11-1981 passed by the learned Divisional Commissioner, Belgaum dismissing appeal VPC. AP. 14/ 81-82 from the order dated 21-8-1981 passed by the learned Assistant Commissioner, Dharwad, in VPC. SR. 23/81-82 removing the present petitioner from the office of the Chairman consequent upon a motion of no confidence passed on 23-7-1981.

2. It is admitted that 10 out of 15 members moved the motion of no confidence, and that in due course the Chairman himself called a meeting for consideration of that motion. Curiously, though not surprisingly, the Chairman did not attend the meeting, and what is more he granted leave to the Secretary and consequently he too was absent on 23-7-1981. However, 11 out of the 14 members present including the vice-chairman supported and passed that resolution. The vice-chairman reported the matter to the Chief Executive Officer, Taluk Development Board, Kalaghatgi who by letter dated 1-8-1981 sent a report to the Assistant Commissioner, Dharwad, who in turn passed order on 21-1-1981 removing the petitioner-Chairman, presumably in exercise of the power under S. 32(2) of the Karnataka Village Panchayats and Local Boards Act.

3. The petitioner lost no time and he preferred an appeal before the Divisional Commissioner on 4-9-81 contending inter alia that the learned Assistant Commissioner had not cared to enquire why the secretary was absent and

Proceedings Book was not available; that showed that the proceedings were manipulated; that the resolution passed by the Panchayat on 23-7-1981 was illegal, perfunctory and vague since the members could not have discussed the allegations without the material record; that the Assistant Commissioner ought to have given an opportunity of being heard to the petitioner; that the passing of the resolution was communicated not by the Secretary as required by Rule 8 of the No confidence motion against Chairman or Vice-chairman of the Panchayats Procedure Rule, 1959 etc.

4. The learned Divisional Commissioner after hearing the counsel for the petitioner has dismissed the appeal. He has said that the no confidence motion passed at the ordinary meeting called by the Chairman was quite good despite the fact that a special meeting as required by Rule 5 was not called, since the nature of the meeting was not an essential requirement for the validity of the resolution; that the proceedings could not be invalidated merely because the Secretary did not record the minutes. The learned Divisional Commissioner has placed reliance on a decision of the High Court in Balawant Singli v. Collector of Shivapuri, AIR 1971 M.P. 204, in the absence of the Secretary the vice-chairman had communicated the passing of the resolution to the Chief Officer of the Taluk Development Board and that circumstance also could not be pressed into service for avoiding the no confidence motion passed by more than 2/3 majority,

5. The petitioner has contended before this Tribunal that the learned Divisional Commissioner has made light of the breach of the Rules, that the proceedings are bad in violation of principles of natural justice etc.

6. The Counsel for the petitioner and also for respondents 2 to 12 were heard. We are of the opinion that there is nothing contrary to law in the orders passed by the authorities below, and much less there is scope for a grievance that the orders have produced injustice.

7. It is not pointed out how the letter and spirit of S. 32 of the Karnataka Village Panchayats and Local Boards Act has been violated. There was a motion of no confidence as required by law, and the petitioner himself called a meeting and conveniently thought he could frustrate the intentions of the members of the Panchayat by remaining absent and granting leave to the Secretary. The members met on the appointed date and passed the resolution expressing no confidence. It is impossible to understand how there has been a negation of any kind of right of the petitioner.

8. No doubt Rule 5 of the No confidence motion against Chairman and Vice-chairman of the Panchayat Procedure Rules, 1959 says that the Chairman shall convene a special meeting for purpose of considering the motion of no confidence. That does not mean that such a motion of no confidence cannot be considered at an ordinary meeting. The object of the Rule appears to be that the chairman cannot wait until an ordinary meeting is called and that he should call a special meeting for the purpose of considering the no confidence motion within

30 days from the date of receipt of the notice. It is unfortunate that attempts are made to take advantage of Rules which are merely of a procedural nature, and which are framed in exercise of the power under S. 210(1) of the Karnataka Village Panchayats and Local Boards Act for the guidance generally of Panchayats and Government officers in all matters connected with the administration of the Act.

9. As the title itself makes out, the Rules relate to procedure and do not purport to create or destroy a right. It is well known that Procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the hand-maid to justice and not a mistress, a lubricant, and not a resistant in the administration of justice. (AIR 1976 SC. 1177).

10. Such procedural rules are often enthroned to the status of substantive law and any breach of the mere procedural rules stretched to set at nought the decision taken notwithstanding the fact that no right is lost or liability created. In this connection reference may be made to what has been stated in Crawford's "Statutory Construction".

As a general rule a statute (not just a rule as in the case before us) which regulates the manner in which public officials shall exercise the power vested in them, will be construed as directory rather than mandatory, especially where such regulation pertains to uniformity, order and convenience, and neither public nor private rights will be injured or impaired thereby.....

We may also refer to the observations of the Supreme Court in Pratap Singh v. Krishna Gupta, AIR 1956 SC. 140 :

We deprecate this tendency towards technicality; it is the substance that counts and must take precedence over mere form. Some rules are vital and go to the root of the matter they cannot be broken: others are only directory and a breach of them can be overlooked provided there is substantial compliance with the the rules read as a whole provided no prejudice ensues; and when the Legislature does not itself state which judge must determine the matter and, exercising a nice discrimination sort out one class from the other along broad based, commonsense lines.

11. Breach of procedural rules, such as no confidence motion against chairman or vice-chairman of a Panchayat (Procedure) Rules, 1959 can never lead to altering or reversing the resolution unless it is established that a right conferred by the Village Panchayats and Local Boards Act has been denied or jeopardized by reason of non-compliance with the rules. What has happened in the case before us is that the Secretary has not recorded the proceedings and he has not also communicated the passing of the resolution to the Executive Officer of the Taluk Development Board. As said before the Secretary was on leave and someone else has recorded the proceedings and the vice-chairman has communicated the passing of the resolution. We find it impossible to accept the

contention that by reason of such omissions or commissions the right of the chairman is jeopardized. It matters not as to who records the proceedings or communicates the passing of the resolution. This Tribunal has held in revision petition 87/81 and others that the essential requirements of the no confidence motion are no more than:

- (1) Giving notice of the intended motion.
- (2) Service of such notice on the Chairman.
- (3) The chairman or in the case of default by him the Chief Executive Officer calling a meeting after due notice to the Chairman; and;
- (4) Passing of a resolution by not less than 2/3ds of the members of the Panchayat.

It was held therein that any irregularity in the formality to be observed never matters unless prejudice is established.

12. The learned Counsel for the petitioner was unable to point out how any of the irregularities in the procedure followed took away any right of the chairman. He only contended that the rules were sacrosanct and any breach should result in setting aside the resolution whether or not prejudice was established. Such is not the law and we repeat that breach of procedural rules shall not result in the reversal of decisions or orders unless prejudice is demonstrated.

13. We are satisfied that there is nothing wrong or unlawful in the resolution passed by the Panchayat or the orders passed by the Assistant Commissioner and the Divisional Commissioner and that there is not even a semblance of miscarriage of justice. Therefore the petition is dismissed.