

(2004) 07 KAR CK 0046
In the Karnataka High Court
Case No : Writ Petition No. 30513 of 2004

Maresh Prakash

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 29-07-2004

Acts Referred:

Karnataka Panchayat Raj (Motion of no-confidence against Adhyaksha and Upadhyaksha of Grama Panchayat) Rules, 1994 — Rule 3 (1)

Citation : (2004) 4 KCCR 2351

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Veeresh B. Patil, for the Appellant; H.B. Narayana, High Court Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Petitioner claims to be functioning as the President of Keralli Gram Panchayath in Chincholli Taluk, Gulbarga District.

2. It appears, the requisite number of members of this Council have requisitioned the second Respondent-Assistant Commissioner to fix a meeting for moving a "No Confidence Motion" against the Petitioner. The Assistant Commissioner, thereafter, has in turn, notified all the members that a meeting is fixed on 30th of this month, for such purpose.

3. At this stage, this petition is presented by the Adhyaksha of the Panchayath alleging that the notice that had been issued by the members to the Deputy Commissioner, requesting him to fix a meeting is not in conformity with the requirement of law; that a notice for the purpose should be as indicated in Form No. 1 of the Karnataka Panchayat Raj (Motion of No Confidence against the Adhyaksha and Upadhyaksha of Gram Panchayat) Rules, 1994 ("the Rules" for short). The relevant rule is Rule 3(1) of the said Rules. It is the averment of the Petitioner that the notice in Form No. 1 had not been accompanied by a copy of the proposed motion. In the circumstances, intervention by this Court in exercise

of writ jurisdiction is sought for.

4. Sri Veeresh B. Patil, learned Counsel for the Petitioner submits that it is a requirement of law that a notice in Form No. 1 signed by not less than 1/3 of the members should be accompanied by a copy of the proposed motion and that should be delivered to the Assistant Commissioner. Learned Counsel submits that the Petitioner had occasion to seek for a copy of Form No. 1 notice and the Assistant Commissioner has furnished him only a copy of the Form No. 1 requisition without a copy of the proposed motion. Learned Counsel submits that in the circumstances, the very motion is not in conformity with the provisions of law and a motion of this nature cannot be permitted to be moved against the Petitioner as it fails to meet the requirements of law.

4. Learned Counsel for the Petitioner, in this regard, has brought to my notice, a decision of this Court rendered in Mallamma Vs. State of Karnataka and Others, . Learned Counsel submits that the view taken by the learned Single Judge in this decision has been subsequently followed in other cases and commends acceptance of such view and for quashing the proceedings. He submits that it is a fit case for issue of writ to quash the proceedings initiated by the members for no- confidence motion.

5. On the requisite number of members as indicated in Rule 3(1) of the Rules putting the Assistant Commissioner on notice that is required to fix a meeting to move a proposal of "No-confidence motion" and the Assistant Commissioner on being satisfied about the correctness or the legality of the same, is required to notify all members by issuing a notice in Form No. 2. The Assistant Commissioner, undisputedly has now proceeded to this stage. It is obvious that he is satisfied about the complaints as indicated in Sub-rule (1) to Rule 3 of the Rules.

6. I am of the view that it is not necessary for this Court to investigate or interfere in the process that has been set in as ultimately the fate of a person occupying the post of a Adhyaksha is required to be tested by the members of the Council who have either confidence or not in such a person. In a democratic process, persons occupying elected posts should not be weary or evasive to face the members who have elected them and to answer them. The President is there only so long as the president enjoys the confidence of a Council with the requisite number of members supporting his continuance and not otherwise. It is not necessary of this Court to examine the technical compliance of such requirements at this stage. Ultimately if the motion is carried and if the passing of such no confidence motion is found to be illegal, it is only then this Court will examine and issue appropriate writ and not at any every stage. I am of the clear view that it is not necessary for this Court to issue a writ at this stage. It is for the Petitioner to muster the necessary support and retain his position.

7. No occasion to interfere. No need to issue a writ at this stage.

Writ petition is rejected.