
(1999) 11 AP CK 0089
In the Andhra Pradesh High Court
Case No : Writ Petition No. 21185 of 1999

P. Babu Raju

APPELLANT

Vs

Revenue Divisional Officer, Sangareddy and others

RESPONDENT

Date of Decision : 05-11-1999

Acts Referred:

Andhra Pradesh Municipalities Act, 1965 — Section 46
Andhra Pradesh Panchayat Raj Act, 1994 — Section 153, 2(30), 245(1), 268
Andhra Pradesh Panchayat Raj Rules, 1994 — Rule 3

Citation : (2000) 2 ALD 317 : (1999) 6 ALT 771

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

Bench : Single Bench

Advocate : M/s. L. Ravichander and Prabhakar, for the Appellant; Government Pleader for Panchayat Raj and Mr. A. Ramakrishna for Mr. S.R. Deshmukh, for the Respondent

Judgement

1. The writ petition is filed by the elected President of the Mandal Praja Parishad, Kalher Mandal. He is aggrieved by the action of the majority members of the Mandal Praja Parishad in expressing no confidence in him. He also complains that the procedure contemplated u/s 245 of the A.P. Panchayat Raj Act, 1994 (the "Act" for brevity) and the Rules made under sub-sections (1) and (2) of Section 245 read with sub-section 268 of the, A.P. Panchayat Raj Act, 1994 (hereafter called "the Rules") was not followed.

2. The elections to Mandal Praja Parishad were conducted in March, 1995 and the petitioner was elected as President, Mandal Praja Parishad, Kalher. The Mandal Praja Parishad consists of eleven members. Seven members of the Mandal Praja Parishad gave a notice to the competent authority, the Revenue Division Officer, Sanga Reddy, the first respondent herein, in Form No.11 (appended to the Rules) enclosing a copy of the proposed resolution expressing no confidence in the petitioner. Notice in Form II was signed by seven members. The proposed resolution was also signed by seven members. The first respondent after having considered the notice issued by seven members in Form II, initiated action as

contemplated u/s 245 of the Act. He issued notice to all the members in Form V. Here, it is useful to notice Form V which is appended to the Rules:

Lr. No.B4 2861/99, dated 24-9-1999

To Sri Padma Babu Raju, President, Member of MPTC, Kalher Mandal Parishad.

Sir,

Whereas a notice of intention to make a motion expressing want of confidence in the President of Kalher Mandal Parishad has been delivered to me as required under sub-section (2) of Section 245 of the Andhra Pradesh Panchayat Raj Act, 1994 (Act No. 13 of 1994).

Now, therefore, under sub-section (1) of Section 245 of the said Act, I hereby give notice that a meeting of the Mandal Parishad shall be held at the office of the Mandal Parishad on 11-10-1999 at 11.30 a.m., for considering the said motion of no-confidence.

A copy of the proposed motion of no-confidence is enclosed.

Sd/- Revenue Divisional Officer, Sangareddy.

3. According to the first respondent and the second respondent, the notice in Form No.V was served on all the members of the Mandal Praja Parishad along with a copy of the proposed resolution signed by seven members. This is very seriously disputed by the petitioner. Indeed, this is the only serious contentious issue in this case.

4. After the issue of Form V notice, the petitioner approached this Court by filing the present writ petition. He prayed for a writ of mandamus to declare the action of the first respondent in issuing the Form V notice dated 24-9-1999 as illegal and contrary to the provisions of Section 245 of the Act and (he Rules.

5. In the affidavit filed in support of the writ petition, the petitioner states that the second respondent moved the resolution without notice to him and thereafter kidnapped all the members except Smt. Puranbai, who is the member of MPTC Sirgapur. The first respondent issued notice informing that a special meeting is scheduled to be held on 11-10-1999 at 11.30 a.m. to consider the motion of "No Confidence" against him. The petitioner stated that under Rule 2, the members are required to serve the copy of the proposed motion on the petitioner along with Form Nos.1, II and III and as the said procedure was not followed, the issue of impugned proceedings in Form V is bad in law. He also submits that the impugned proceedings are in contravention of the Rules as well as the provisions of Section 245 of the Act. Except these two grounds, he has not raised any serious dispute as to factual aspects or as to legal aspects involved in this case.

6. This Court while ordering notice before admission directed that any resolution that may be passed on 11-10-1999 shall not be given effect to.

7. The first respondent as well as the second respondent have filed counter

affidavits and in fact, both the respondents have come forward with two separate applications to vacate the interim orders. As all the pleadings are completed, the matter is being disposed of at the interlocutory stage with the consent of the learned Counsel.

8. In the counter affidavit filed by the first respondent the Revenue Divisional Officer states that Form No.V along with the proposed resolution was served on all the 11 MPTC members of the Kalher Mandal and the meeting was scheduled on 11-10-1999 at 11.30 a.m., at the office of the Mandal Parishad, Kalher. On 11-10-1999 the meeting was conducted and in response to the notices in Form No.V, nine MPTC members and one co-opted member attended the meeting. All the members present raised their hands against continuation of the petitioner as President of Mandal Praja Parishad, Kalher. The petitioner and the lady MPTC member from Sirgapur were absent. Therefore, they validly passed "No Confidence Motion" the Mandal Praja Parishad expressed lack of confidence in the petitioner. Adverting to the question of kidnapping, the Revenue Divisional Officer states that the said allegation is not true and none of the family members of the alleged victims ever gave any complaint to the police or the Revenue Divisional Officer. The first respondent specifically adverted to the allegation of non-service of notice in Form V and in paragraph 5 has stated as follows:

"In reply to para 7 it is submitted that the notice in Form V issued to the petitioner was got served by the Revenue Inspector, Kalher at his residence at Bachepally (V) and the same was attested by the MPDO Kalher. The contention of the petitioner saying that the notice was sent through the village servant of Bachepally (V) is incorrect. There is no procedure in the Act or in the Rules contemplating that the notice has to be served by the 2 members on the petitioner and rule does not say the same."

9. This counter affidavit is filed by the Revenue Divisional Officer seeking to vacate the stay, on 26-10-1999. The petitioner filed a reply affidavit to the counter filed by the first respondent. In this affidavit by way of a rejoinder, the petitioner has come forward with a new version. He states that Form V was served at his residence on his daughter through the village servant by name Saiyulu. His further statement is that Form V was served without a copy of the proposed resolution. He further states that Form V was not served in accordance with sub-section (2) of Section 245 of the Act read with Rule 3 of the Rules and as such the entire proceedings are vitiated for ignoring mandatory provisions.

10. In the counter filed by the second respondent which is on the same lines as that of the counter of the first respondent, the second respondent denied the contention of the petitioner that Form II shall be served on the petitioner by two members of the Mandal Praja Parishad and that Form V was served on the petitioner validly enclosing the proposed "No confidence motion" signed by seven members. The petitioner did not file any rejoinder to this counter-affidavit.

11. The learned Counsel for the petitioner has elaborately submitted that the

provisions of sub-section (1) of Section 245 of the Act and sub-rule (3) of Rule 3 of the Rules are mandatory. While issuing notice of meeting first respondent has not served Form V notice along with a copy of the proposed resolution. Therefore, the mandatory procedure was followed more in breach rendering the entire proceedings ending with the resolution on 11-10-1999, illegal.

12. The learned Government Pleader has produced the original record before me and after taking me through the original record submits that Form V along with the proposed resolution was served at the petitioner's house on 25-9-1999; that it was received admittedly by his daughter Ms. Samatha and that the Mandal Parishad Development Officer by his letter dated 25-9-1999 has informed the first respondent that in compliance with the instructions issued by the first respondent, 12 notices in Form V informing the date of the meeting for considering the "No confidence motion" against the petitioner were served by the Revenue Inspectors on all concerned including the President on 25-9-1999; that the petitioner in his affidavit, in fact also submits this position and did not make any averment that Form V was served without the proposed resolution and therefore, as a fact it should be concluded that Form V has been served in accordance with law, namely, along with a copy of the proposed resolution. Even otherwise, according to the learned Government Pleader, Rule 3 as such does not contemplate serving of notice of meeting in Form V along with a copy of the proposed motion of "No confidence" and that Rule 3 only contemplates serving Form V either in English, Telugu or in Urdu, whichever is applicable, by duly delivering either by giving or tendering notice to the member or in other modes of service. Therefore, the procedure of enclosing the copy of the proposed "No confidence motion" is not mandatory. In support of his contention, he relies on a Division Bench judgment of this Court in *Yeni Reddy Raghava Reddy Vs. Government of A.P., Secretary, Panchayat Raj Department Secretariat, Hyderabad and others*, .

13. The learned Counsel for the second respondent Sri A. Ramakrishna has reiterated the same submissions made by the learned Government Pleader for Panchayat Raj.

14. Having regard to the various rival contentions, the points that arise for consideration are:

(1) Whether enclosing the copy of the proposed resolution while serving notice in Form V is mandatory as per the provisions of sub-section (1) of Section 245 of the Act read with Rule 3 of the Rules.

(2) Whether the first respondent has not served notice of meeting in Form V along with a copy of the proposed resolution as required by the Rules.

(3) To what relief?

In re Point No. 1:

15. Section 245 of the Act provides for motion of no confidence in Upa-Sarpanch

of Gram Panchayat, President of Mandal Parishad or Chairman of Zilla Praja Parishad etc. Sub-section (1) of Section 245 reads as under:

"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."

16. While providing for a motion expressing want of confidence in the President of Mandal Parishad, the subsection (1) of Section 245 of the Act ordains that action in furtherance of notice of no Confidence shall be taken in accordance with the prescribed Rules. The notice of intention to move the motion of "No confidence" shall also be in such form and shall be to such authority as may be prescribed. The word "prescribed" as defined in Section 2(30) of the Act means prescribed by the Rules made by the Government u/s 268 of the Act. The Governor of Andhra Pradesh in exercise of the powers u/s 268 read with sub-sections (1) and (2) of Section 245 has promulgated the Rules. According to Rule 1, the motion expressing want of confidence in the President of Mandal Parishad may be in accordance with the procedure prescribed in these Rules. It is useful to extract Rule 1:

"1. A motion expressing want of confidence in the Upa-Sarpanch of the Gram Panchayat or President or Vice-President of a Mandal Parishad or Chairman or Vice-Chairman of a Zilla Parishad may be made in accordance with the procedure prescribed in these Rules."

17. Rule 2 of the Rules says that a notice of the intention to make the motion shall be made in, in Form 11 (If it is Mandal Praja Parishad) annexed to the rules either in English or in Telugu or in Urdu language signed by not less than one-half of the total number of members of the Mandal Praja Parishad together with a copy of the proposed motion and shall be delivered in person by any two of the members who signed such notice, to the Revenue Divisional Officer. Rule 3 contemplates the action to be taken by the competent authority, i.e., the Revenue Divisional Officer in this case. According to Rule 3, the Revenue Divisional Officer shall then convene and preside over the meeting for consideration of the motion at the office of the Mandal Parishad. Before convening the meeting there is another obligation thrown upon the Revenue Divisional Officer, i.e., he has to fix a date for the meeting. That date shall be appointed by giving notice to every member of the Mandal Parishad in Form V. The mandatory requirement is that there shall be a meeting within 30 days from the date on which notice under Rule 2 is delivered to authorised officer. The Rule further says that there shall be clear 15 days notice before the date of meeting. As noticed earlier, Rule 3 also contemplates four modes of serving notice viz., by giving or tendering notice to the member by leaving a notice at his last known

place of residence if such member is not found and if such member does not reside in the Mandal Parishad area, by sending the same through registered post acknowledgment due or by affixing the same at some conspicuous part of his place of residence. Rules 4 and 7 are not relevant for the purpose of this case. Rule 8 says that on the day of the meeting the Revenue Divisional Officer shall read to the members of the Mandat Parishad the motion for the consideration of which the meeting has been convened and shall put it to vote without any debate and that the voting shall be by show of hands.

18. No doubt, sub-section (1) of Section 245 says that the service of notice of intention to move the "No confidence Motion" and further action of such notice shall be in accordance with the procedure prescribed under the rules. There cannot be a motion to express confidence without first serving the intention to move "No confidence" and without putting the motion to voting. This is not disputed. What is contended is that without a copy of the proposed resolution, there cannot be valid service of notice of meeting. For appreciating the contention of the learned Counsel, it is necessary to refer to Rule 3 which is as follows:

"3. The concerned officer specified in Rule 2 (hereinafter in this rule referred to as said officer) shall then convene and preside over the meeting for consideration of the motion at the office of the Gram Panchayat or at the Mandal Parishad, as the case may be, on a date appointed by him which shall not be later than thirty days from the date on which the notice under Rule 2 was delivered to him. He shall give to every member of Gram Panchayat, Mandal Parishad or Zilla Parishad as the case may be, the notice of not less than fifteen clear days excluding the date of the notice and the date of the proposed meeting of which meeting in Form IV or in Form V or in Form VI annexed to these rules either in English or in Telugu or in Urdu language, whichever is applicable."

19. The two important aspects for the purpose of sub-section (1) of Section 245 are issuing a notice of intention to move the motion to such authority and convening meeting as prescribed. Further action to be taken as per Rule 3 is to serve notice in Form V within 30 days after receipt of the notice of intention and fixing a meeting giving a clear 15 days notice of meeting and then conduct the meeting. The obligation to serve notice in Form V along with a copy of the proposed resolution is very conspicuous by its absence. This may be better appreciated by reference to Rule 2 which says that Form II which is a notice of intention is not complete without a copy of the proposed resolution. If the rule-making authority thought that enclosing a copy of the proposed resolution is a mandatory requirement, the rule-making authority must have said in Rule 3 itself that Form V shall be served along with a copy of the proposed resolution. Some credence has to be given to the rule-making authority who has taken every care for laying down the method and manner of serving of notices by fixing the date and time of the meeting and the period during which Form V has to be served. In the light of this, this Court has to consider the significance or insignificance of the

last sentence in Form V.

20. As already seen, Form V contains 3 paragraphs. The first paragraph in effect puts a person on notice of the fact that a notice of intention to express want of confidence has been delivered to the concerned officer under sub-section (2) of Section 245 of the Act. The second paragraph of Form V then states that in view of the notice of intention, the officer is giving notice that a meeting of Mandal Praja Parishad shall be held at the office of the Mandal Parishad for considering the motion. These two paragraphs distinctly deal with two mandatory requirements of Rule 3. The same is not the case with the last paragraph which contains only one sentence to the effect that the copy of the proposed motion of "No confidence" is enclosed. As already held by me the purport of paragraphs 1 and 2 in Form V is in consonance with subsection (1) of Section 245 of the Act and Rule 3 of the Rules whereas it is not the case with regard to the last sentence in Form V. Therefore, it has to be held that though it is a requirement as per Form V, enclosing a copy of "proposed motion of no confidence" is not required as per the provisions of the parent Act or the Rules. Hence, the submission made by the learned Counsel for the petitioner Sri Prabhakar that sending the copy of Form V along with the proposed resolution of "No confidence" is mandatory is liable to be rejected. This view is further supported by the very fact that Rule 8 does not give any scope for any debate. The meeting is convened only for the purpose of voting by raising hands on the issue of "No confidence motion". If any debate is allowed in the meeting held by the Revenue Divisional Officer, then we can understand the submission of the learned Counsel for the petitioner that without knowledge of the proposed resolution the petitioner cannot effectively participate in the debate. When the rule itself does not permit any debate during the meeting convened for the purpose of consideration of "No confidence motion" non-service, if it is true, of the proposed resolution, along with Form V, does not render the notice itself illegal. Further, as observed by me, though sub-section (I) of Section 245 says that written notice of intention to move the motion of "No Confidence" shall be in such form and further action shall be taken in accordance with the Rules, Rule 1 of the Rules itself says that a motion expressing want of confidence may be in accordance with the procedure prescribed in these Rules. It should be held that the delegated legislative authority is aware of Rule 8 which does not permit any debate and that is the reason why Rule 3 does not contemplate serving Form V along with the copy of the proposed motion of no confidence.

21. The learned Counsel for the petitioner Sri Prabhakar has strongly relied on the judgment of the learned single Judge in *Ghouse Mohiddin v. District Collector* 1990 (1) An.WR 72, wherein it was held:

"In this case the copy of the proposed motion of no confidence by the member councillors who signed the notice intending to move motion of no confidence is lacking. As held earlier these statutory requirements are mandatory and absence of any one of the steps in that regard constitutes non-compliance of Section

46(2) and thereby the proposed action is clearly in violation of Section 46(2). Therefore, the second part of the mandatory requirement of sub-section (2) of Section 46 has not been complied with. Consequently, the notice issued by the District Collector convening the meeting to consider the motion of no confidence is clearly illegal."

22. The learned Counsel further relied on the judgment of another learned single Judge of this Court in *Perika Anjali v. State of A.P.* 1997 (6) ALD 766 : 1998 (2) An.WR 138. In *Perika Anjali's* case (supra), this Court ruled as follows:

"Unmistakably, Section 245 of the Act should be held to be mandatory not only regarding the notice of No confidence motion, preceding the No confidence proceedings, but also the other ingredients mentioned therein. To conclude, this Court holds that not only the notice of No-confidence is mandatory u/s 245(1) of the Act and Rule 2 of the Rules, but also the mode of service under Rule 3 of the Rules is mandatory."

23. These two judgments rendered by learned single Judges are of no help to the petitioner. These cases do not deal with a situation as is presented in this case. In *Ghouse Mohiuddin's* case (supra), having regard to the provisions of sub-section (2) of Section 46 of A.P. Municipalities Act, 1965 (which says that one half of the strength of the Municipal Council shall serve notice of intention of no confidence along with proposed motion and that the same shall be delivered by any two Councillors) this Court held that the provision is mandatory. In *Perika Anjali's* case (supra), this Court ruled that mode of service under Rule 3 is mandatory about which there is no quarrel. The learned Government Pleader relied on a Division Bench judgment of this Court in *Samala Jayaramaiah Vs. Government of Andhra Pradesh and Others*, . In that case a notice of intention to move the "No Confidence Motion" against Chair person of Zilla Parishad was served on the District Collector. On 29-11-1997 the District Collector issued a notice convening the meeting of Zilla Parishad on 18-12-1997 for considering the motion of "No confidence" against the Chair person. The said notice was challenged in Writ Petition No.33119 of 1997. In the meanwhile, the Congress party issued a whip to all its 15 members to abstain from the meeting. Therefore, the contention was that as a consequence of the whip the members belonging to the Congress party cannot participate in the meeting to be held for consideration of "No confidence motion" and therefore with the remaining 28 members of Telugu Desam party the meeting for considering the "No confidence motion" cannot be validly conducted because as per the provisions, the motion has to be carried with the support of not less than 2/3 of the total members. The contention was rejected by the learned single Judge and the writ petition was dismissed. The learned single Judge followed the judgment of another learned single Judge in *M. Veerabhadra Rao, President, M.P.P. Vs. Election Tribunal-cum-Subordinate Judge and Others*, . In the background of these facts, in the writ appeal, the point that arose for consideration before the Division Bench was whether there is any difference between the provisions of Section 153 and

Section 245 of the Act in so far as the procedure is concerned. Dealing with these submissions, the Division Bench concluded as under:

"It may not be out of place to state that the learned single Judge's decision was referred to before a Division Bench of this Court. Though no final opinion was expressed to regarding the correctness of the view taken by the learned single Judge, the Division Bench prima facie thought that the view may require reconsideration. In any event, we are clear that the decision of learned single Judge is not binding on us. This is apart from the fact that the learned single Judge's decision, as rightly pointed out in the judgment under appeal, has no application to the facts of the present case. Holding of an elected office is not a fundamental right. It is a right arising out of Statute. If a Statute provides any procedure for holding or vacating the said elected office, we do not think that there is any infringement of any of the fundamental rights of any one. Voting in or voting out both are facets of an election process. There is nothing in the statutory provisions or the Rules to specifically show that a person voting in violation of the whip becomes dismembered from the time anterior to his voting. Any penal provision has always to be construed very strictly. We think that it would be reading something in the Rules which is not there if it is to be held that a member violating the whip on account of voting or non-voting loses his membership before the event of voting takes place." (emphasis applied).

24. I have considered the judgment of the Division Bench with the deepest respect. In fact, the observations of Hon'ble Justice Bhate who spoke for the Division Bench, underlined by me, support the view taken by me. I have already held that a reading of Rule 3 of the Rules does not permit to interpret that serving Form V along with the copy of the proposed resolution as mandatory, because it amounts to reading something into Rule 3 of the Rules which was not accepted by the Division Bench.

25. The learned Government Pleader for Panchayat Raj and Sri Rama Krishna learned Counsel for the second respondent have placed reliance on another Division Bench judgment in Y.R. Raghava Reddy v. Government of A.P., (supra). They submit that this judgment of the Division Bench which was also rendered by His Lordship Hon'ble Justice Bhate is directly on the point and according to this judgment, enclosing a copy of the proposed resolution while serving Form V notice under Rule 3 is not a mandatory requirement. Before the Division Bench a specific submission was made that as the notice in Form V was not accompanied by a true copy of the proposed resolution, the same is not notice in Form V at all. This contention was rejected firstly on the ground that there was no specific pleading to that effect and secondly on the ground that official acts are presumed to have been done in due discharge of the duty as envisaged and contained in the notice. The Division Bench held as follows:

"We have perused the record. The notice was served though the copy of the proposed motion of No confidence is not attached with the said notice. Be that as it is, nothing has been pointed out at the Bar whereby, by the Legislature, it has

been provided that non-compliance of processual or procedural provisions of service of notice or the form of notice would render the vote of no-confidence invalid. The object of procedural law is to serve the person or apprise the person that a vote of no-confidence would be held on a particular date and at a particular time for consideration of the motion of No-confidence. It is only the intention of the proposer which has to be intimated to the members, which has been categorically made in the present case. It cannot be assumed that the petitioner was not aware of the object of the meeting, time of meeting and place of meeting. There is nothing on record from which we can assume that even the copy of the proposed motion was not enclosed. If it would have been so, the members would have approached the authority stating that the notice does not carry the copy which is stated to have been enclosed with the notice. Official acts are presumed to have been done in due discharge of the duty as envisaged and contained in the notice."

26. For the reasons thus, I have to hold on point No.1 in the negative, i.e., against the petitioner and in favour of the respondent.

In re point No.2 :

27. The learned Counsel for the petitioner has repeatedly invited my attention to the affidavit filed along with the writ petition, to the reply affidavit and the affidavit filed by the alleged village servant of Bachepalli village and after going through the original record submits that Form V was not served on his client as required under law. To be specific, he says that Form V when it was served on the petitioner's daughter on 25-9-1999, was not accompanied by the true copy of the proposed resolution. The learned Government Pleader has, however, refuted this allegation relying on the record.

28. Admittedly, the petitioner has not raised any specific contention in the affidavit filed along with the writ petition with regard to serving a copy of the resolution along with Form V notice. As noticed earlier, after the learned Government Pleader filed the counter on behalf of the first respondent, the petitioner came forward with an improved version in the reply affidavit. To support his contention that only Form V notice was served on his daughter on 25-9-1999 the learned Counsel for the petitioner relies on an affidavit dated 31-10-1999 given by one Saiyulu (filed in the Court on 1-11-1999), who is allegedly working as village servant of Bachepalli and the certificate dated nil (filed in the Court on 4-11-1999) allegedly issued by the Mandal Parishad Development Officer. In the affidavit of Saiyulu, he stated that as a village servant he was asked to serve Form V notice on the petitioner by the Mandal Parishad Development Officer on 25-9-1999 and as the petitioner was absent in the house, he served Form V notice on his daughter and that he "was not asked to serve any other papers except Form V. The certificate issued by the Mandal Parishad Development Officer dated nil is to the effect that the notice informing the date of the meeting as 11-10-1999 was served on the petitioner on 25-9-1999 by him while the Revenue Inspector and the village servants were

present. The two documents contradict each other. The village servant says that he went and served Form V notice on the daughter of the petitioner. The certificate issued by the Mandal Parishad Development Officer says that the notice of meeting was served on the petitioner by the Mandal Parishad Development Officer when the Revenue Inspector and Village servants were present and that the Village servants went inside when he served the notice. In fact, the alleged certificate issued by the Mandal Parishad Development Officer goes against the case of the petitioner. Even according to the certificate, the village servants went inside the house of the petitioner and completed the service of notice. In the usual course of things, it would be the natural conduct of any body including the lower official like the village servant to inform the authorised officer that notice is served on the daughter. If what is stated to be true by Saiyulu, the village servant, the same should have reflected in the certificate issued by the Mandal Parishad Development Officer. Further, in the original file produced before me, on 25-9-1999 itself the Mandal Parishad Development Officer wrote to the first respondent that as directed by the Revenue Divisional Officer he has served or caused service to be effected on all the members of the Mandal Praja Parishad through/by Revenue Inspectors concerned. This further belies the certificate allegedly issued by the Mandal Parishad Development Officer. This aspect of the matter has caused some amount of disturbance in the mind of the Court. The conduct of the Mandal Parishad Development Officer who has sent a letter in the official course of business on 25-9-1999 informing the Revenue Divisional Officer that service was effected on all according to the rules, ought not to have issued this undated certificate which is inconsistent with his letter as an official of Mandal Parishad and in fact, contradicts the sworn affidavit filed by the village servant. As the Mandal Parishad Development Officer is not a party before me, I am not proceeding any further in this regard. But I hasten to add and I hope that the District Collector, Medak shall initiate appropriate action against the Mandal Parishad Development Officer who in his own way tried to interfere with the course of justice.

29. The above discussion would clearly indicate that Form V notice was served in accordance with Rule 3. I further record a finding that Form V was served on the daughter of the petitioner on 25-9-1999 along with a copy of the proposed resolution signed by seven members who gave notice of intention of "No confidence" in Form II on 22-9-1999 to the first respondent. Even at the cost of repetition my reasons are as follows:

- (i) The petitioner did not aver very specifically that Form V notice was served on him without the copy of the proposed resolution;
- (ii) Even in the reply affidavit he did not specifically say whether his daughter informed him that either the Mandal Parishad Development Officer or the Village servant has served only Form V notice because it is for the first time he came to know about Form V notice only through his daughter.

(iii) The two documents relied on by him, i.e., the third party affidavit filed by Saiyulu, the village servant and the undated and unauthorised certificate by the Mandal Parishad Development Officer do not support his contention.

(iv) The endorsement/acknowledgment of the petitioner's daughter on the duplicate copy of Form V notice does not specifically say that the proposed resolution is not served.

(v) There is nothing on record from which I can assume that the copy of motion of no confidence was not enclosed. In fact, the file contains duplicate copy of Form V along with the proposed resolution with acknowledgment of the petitioner's daughter.

(vi) As observed by the Division Bench in Raghava Reddy's case (supra), all official acts are presumed to have been done in due discharge of the duty as envisaged and contained in the notice.

30. The petitioner's Counsel is not able to dislodge this rebuttable presumption by any evidence either by way of affidavits or by way of documents. For these reasons I have to hold that the petitioner was served Form V notice in accordance with Rule 3 and the proceedings initiated by the seven members culminating in their resolution being passed against the petitioner on 21-10-1999 have not been vitiated in any manner. The point No.2 is answered in the negative against the petitioner and in favour of the respondent accordingly.

In re point No.3 :

31. It is the case of the first respondent as well as the second respondent that this Court has not stayed the meeting scheduled on 11-10-1999 and only observed that the resolutions shall not be given effect to. Accordingly the meeting was convened and as seen from the proceedings of the first respondent dated 11-10-1999 nine (9) members were present on that day. They raised their hands against the continuation of the petitioner and that the petitioner and Smt. Puranbai MPTC member of Sirghapur were absent. Thus, all the nine (9) MPTC members who were present at the meeting expressed their dissent against the petitioner not to continue him as President of Mandal Praja Parishad, Kalher and the motion proposed against him was successful. This is another circumstance which warrants an observation that the petitioner is bent upon stalling the democratic process. Be that as it may, now that the meeting is convened, the resolution has been carried through successfully and what remains is the formality of publishing the notification on cessation of the petitioner as President of the Mandal Praja Parishad. The respondents can take action accordingly.

32. In view of my finding on point Nos.1 and 2, point No.3 is decided, dismissing the writ petition as devoid of merits. There shall be no order as to costs. The interim order dated 11-10-1999 stands vacated.