

(2019) 07 KAR CK 0065

In the Karnataka High Court

Case No : Writ Petition No. 31076 Of 2019 (LB RES)

R Chandrahasa

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision : 26-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 354(A), 376, 511
Karnataka Gram Swaraj & Panchayat Raj Act, 1993 — Section 43A, 49, 49(1), 49(2)
Constitution Of India, 1950 — Article 243ZH(b)

Citation : (2019) 07 KAR CK 0065

Hon'ble Judges : G.Narendar, J

Bench : Single Bench

Advocate : Subrahmanya P D, M.A.Subramani, Rohan Hosmath

Final Decision : Disposed Off

Judgement

1. Heard the learned counsel for the petitioner and the learned counsel for Caveator-respondent No.11 and the learned High Court Govt. Pleader.
2. The petitioner is before this court being aggrieved by the meeting notice issued by the 4th respondent dated 10.07.2019 vide Annexure-L to the writ petition.
3. The brief facts are that the petitioner was elected to the Kesturu Gram Panchayat, Maddur Taluq, Mandya District. The election was held on 05.05.2015 and that subsequently on 13.07.2015 he successfully contested for the post of Adhyaksha of the Panchayat.
4. That on 27.05.2016 an employee of the Panchayat lodged a police complaint. The jurisdictional police on receipt of the complaint registered an FIR and the petitioner was arrested and sent to judicial custody in Crime No.62/2016 for the offences punishable under Section 354(A), 376 and 511 of Indian Penal Code. Subsequently, a charge sheet came to be filed in C.C. No.1025/2016.
5. That based on the above allegations a show cause notice came to be issued,

invoking the provisions of Section 43-A of The Karnataka Gram Swaraj & Panchayat Raj Act, 1993 (for short 'the Act'). The petitioner effected a reply through Mandya Prison authorities. That the Government without affording any opportunity and without awaiting the completion of trial passed an order removing the petitioner from the post of Adhyaksha and also from the membership of the panchayat by order dated 05.08.2016. Aggrieved, he preferred W.P. 48963/2016. The writ petition came to be disposed off by setting aside the order of removal and restoring him to the post of Adhyaksha. It is further submitted that the trial court by judgment dated 18.09.2017 was pleased to acquit the petitioner against the false charges. That the complainant aggrieved by the judgment of acquittal has preferred an appeal registered as Criminal Appeal 137/2018 before this court.

6. In this back ground, the members of the Gram Panchayt have proposed and moved the motion of no confidence.

7. It is the contention of the petitioner that the motion is moved by invoking the provisions of Section 49(2) of the Act. Learned counsel for the petitioner would contend that the proposed motion is on the basis of allegations and hence, the proposed motion is one under Section 49(2) of the Act.

8. The proposed motion is produced as Annexure-K. On perusal of the same, it is seen that the members have merely recounted an incident and the consequential action taken by the Government and they have not requested for moving a motion under Section 49(2) of the Act. In the unnumbered second paragraph they have merely stated that they do not have confidence in the Presidentship of the petitioner and hence they have requested that the motion moved by them under Section 49 of the Act be put the vote and in that regard to convene the meeting for carrying the proposed motion.

9. Pursuant to the representation the Assistant Commissioner-4th respondent has issued the impugned meeting notice, convening the meeting on 29.07.2019. The meeting notice also does not refer to any allegations on the basis of which proposed motion is to be considered. It is apparent that the proposed meeting is in consonance with the provisions of Section 49(1) of the Act. In many a time the proposals may be framed by others on the instruction of the members. The fact that many a member is illiterate cannot be lost sight off. The mere mention of a provision would not suffice to hold that the proposal is under a particular provision. It is the duty of the Authority or the Court to delve into the proposal and ascertain the fact. There can be no denying the fact that the primary duty of the Court is to unearth the truth as it is only then can justice in real terms be dispensed. Technicalities cannot be permitted to defeat the courts quest to unearth truth and dispense justice. Learned counsel for the petitioner would place reliance on the ruling of this court rendered by a co-ordinate Bench and reported in the case of Smt. Poornima Sudhin V. State of Karnataka and Others, reported in 2019 1 Kar. L.R. 385.

10. On perusal of the same, it is evident that the co-ordinate Bench has been pleased to hold so, in view of the fact that a motion was moved and that the motion was on the basis of allegations. In the instant case, motion is not based on any allegations but on facts which have transpired in the past and which fact has also not been denied by the petitioner and the reference is a mere passing reference.

The unnumbered first paragraph reads as under:-

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An "allegation" is defined by the Concise Oxford English Dictionary as "a claim that someone has done something wrong, typically an unfounded one." In the instant case, nothing is alleged by the other members under the proposed motion rather they have merely recounted the fact, which has been enquired into by the department and which finding is accepted by the petitioner and he has also repaid the amounts demanded by the Executive Officer of the Taluk Panchayat. Hence, the contention that the proposed motion is one under 49(2) of the Act is without basis and is required to be rejected and is accordingly rejected.

11. The other contention canvassed by the learned counsel for the petitioner is that 30 months have not lapsed and that the motion of no confidence is contrary to the second proviso to sub-section (1) of Section 49 of the Act.

12. There is no dispute with the fact that the petitioner was elected as an Adhyaksha on 13.07.2015. He came to be removed on account of certain allegations and lodging of a criminal case and his subsequent arrest and detention in prison. The second proviso to Section 49(1) of the Act reads as under:-

"Provided further that no resolution expressing want of confidence against an Adhyaksha or Upadhyaksha, shall be moved [within the first thirty months] from the date of his election:"

13. On a reading of the above it is unequivocally clear that the intervening developments would not stop running of the period which commences from the

date of his election. Admittedly, 30 months have lapsed since the date of his election. Hence, the other limb of argument also must necessarily fail.

14. The learned counsel for the petitioner would place reliance on the ruling of the Division Bench rendered in W.A. No.844/2018 & connected matters. The same is of little assistance in view of the above discussion. The proposed motion can by no stretch of imagination, be construed as one leveling allegations. That apart the Division Bench has doubted the correctness of the finding rendered in paragraph 47 of writ appeal No.844/2018 & in connected appeals which came to be disposed off on 12.10.2018. The Division Bench in W.A. No.311/2019 has further referred the matter to be considered by a larger bench and has been pleased to observe as under:-

"7. Thus, for considering the motion of no-confidence under sub-section (1) of Section 49, the meeting must be held in accordance with the procedure as may be prescribed. Hence, the meeting must be held in accordance with the Rules framed under the said Act of 1993. Under the said Act of 1993, Rules have been framed dealing with the issue of no-confidence motion. The said Rules are the Karnataka Panchayatraj (Motion of No-confidence against Adhyaksha and Upadhyaksha of Gram Panchayat) Rules, 1994 (for short, the said Rules of 1994). The view taken by a Coordinate Bench in the judgment and order dated 12th October 2018 is that as the Rules have not been framed governing a no-confidence motion under sub-section (2) of Section 49, sub-section (2) is unworkable. Therefore, in paragraph 47, it was ultimately held that a motion under sub-section (2) of Section 49 cannot be proceeded with unless Rules are framed governing the procedure of no-confidence motion under sub-section (2) of Section 49. In paragraph No.43, the Division Bench held thus:

43. By virtue of August 2018 Amendment (supra), these Rules are made applicable even to the motions moved under sub-section (2) in which specific allegations are a pre-requisite. By their very nature, a debate becomes inevitable on such motions under sub-section (2). Unless and until a comprehensive set of Rules as applicable to these motions is promulgated, this newly added sub-section (2) will continue to remain unworkable. The Government Circular No.RDP 887 GPA 2017 dated 07.02.2018, being only of executive instructions, cannot be a substitute for the Rules. (underline supplied)"

15. That apart it is also relevant to note the law laid down by the Hon'ble Apex Court in the case of Vipulbhai M. Chaudhary Vs. Gujarat Co-operative Milk Marketing Federation Limited and Others reported in AIR 2015 SC 1960. Paragraph 53 and 54 is of relevance which reads as under:-

"53. The co-operative society registered under the Central or the State Act is bound to function as a democratic institution and conduct its affairs based on democratic principles. Democratic functioning on democratic principles is to be reflected in the respective Acts or Rules or Bye-laws both on the principle and procedure. If not, it is for the court to read the democratic principles into the Act

or Rules or Bye-laws. If a procedure is prescribed in any Act or Rule or Bye-law regarding election of an office bearer by the Board, as defined under Article 243ZH(b) of the Constitution of India, and for removal thereof, by way of a motion of no confidence, the same procedure has to be followed. In case there is no express provision under the Act or Rules or Bye-laws for removal of an office bearer, such office bearer is liable to be removed in the event of loss of confidence by following the same procedure by which he was elected to office.

54. Now that this Court has declared the law regarding the democratic set up of a co-operative society and that it is permissible to remove an elected office bearer through motion of no confidence, and since in many States, the relevant statutes have not carried out the required statutory changes in terms of the constitutional mandate, we feel it just and necessary to laydown certain guidelines. However, we make it clear that these guidelines are open to be appropriately modified and given statutory shape by the competent legislature/authority. Having gone through the provisions regarding motion of no confidence in local self-governments, we find that there is no uniformity with regard to the procedure and process regarding motion of no confidence. Some States provide for a protection of no confidence. Some States provide for a protection of two years, some for one year and a few for six months, to the office bearers in office before moving a motion of no confidence. However, majority of the States provide for two years and a gap of another one year in case one motion of no confidence is defeated. Bihar Panchayat Raj Act, 2006 provides for a protection of two years and one year, Bihar Municipal Act, 2007 provides for a protection of two years and one year, Himachal Pradesh Panchayati Raj Act, 1994 provides for a protection of two years and two years, Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 provides for a protection of two and a half years, Madhya Pradesh Municipalities Act, 1961 provides for a protection of two years and one year, Manipur Panchayati Raj Act, 1994 provides for a protection of two years and one year, Orissa Panchayat Samiti Act, 1959 provides for a protection of two years, Orissa Grama Panchayats Act, 1964 provides for a protection of two years, Punjab Panchayati Raj Act, 1994 provides for a protection of two years, Rajasthan Panchayati Raj Act, 1994 provides for a protection of two years and one year, Rajasthan Municipalities Act, 2009 provides for a protection of two years and Uttar Pradesh Panchayati Raj Act, 1947, as followed by Uttarakhand, provides for a protection of two years and one year. Having regard to the set up in local self-governments prevailing in many of the States as above, we direct that in the case of co-operative societies registered under any Central or State law, a motion of no confidence against an office bearer shall be moved only after two years of his assumption of office. In case the motion of no confidence is once defeated, a fresh motion shall not be introduced within another one year. A motion of no confidence shall be moved only in case there is a request from one-third of the elected members of the Board of Governors/Managing Committee of the co-operative society concerned. The motion of no confidence shall be carried in case the motion is supported by more than fifty percent of the elected

members present in the meeting."

In that view of the matter as held by the Hon'ble Apex Court the panchayats being constitutionally recognized units of local governance, upholding of democracy is of utmost importance. Hence, the petition being devoid of merits in so far as prayer for quashing of Annexure-L is dismissed.

As regards the other reliefs sought for i.e. for consideration of the representation or rather a complaint vide Annexures-G and J, the respondent Nos.1 and 2 shall consider and dispose off the same as expeditiously as possible at any rate consideration and disposal of Annexure-G and J shall be within an outer limit of six months.

The writ petition stands ordered accordingly.

Costs made easy.