

(1998) 01 AP CK 0018

In the Andhra Pradesh High Court

Case No : WA No's. 1462 and 1527 of 1997

Samala Jayaramaiah

APPELLANT

Vs

Government of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 23-01-1998

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 149, 153, 153(1), 245, 245(1)
Andhra Pradesh Panchayat Raj Rules, 1994 — Rule 10, 3, 4, 6, 8
Constitution of India, 1950 — Article 14

Citation : AIR 1998 AP 205 : (1998) 2 ALD 65 : (1998) 2 ALT 180

Hon'ble Judges : P. Venkatarama Reddi, Acting C.J.;A.S. Bhate, J

Bench : Division Bench

Advocate : Mr. V. Ravinder Rao and M/s. L. Ravichander for S. Ramachandhra Rao, for the Appellant; Government Pleader, for Panchayat Raj, Mr. S. Ramachandra Rao and Mr. M.V. Ramana Reddy, for the Respondent

Judgement

A.S. Bhate, J.—We propose to dispose of the two Writ Appeals by this common judgment. Though the points raised in these two appeals are separate they relate to convening of the meeting in respect of the No-Confidence Motion against Dr. Nagabhushanamma, who is appellant in WA No. 1527 of 1997.

2. Dr. Nagabhushanamma was the Chair-person of Nellore Zilla Parishad. A notice was issued by the District Collector, Nellore on 29-11-1997 u/s 245(1) of the Andhra Pradesh Panchayat Raj Act, 1994 (hereinafter referred to as the "Act") for convening of meeting of the concerned Zilla Parishad on 18-12-1997 for considering a Motion of No Confidence against the Chairperson. The said notice was challenged in WP No. 33119 of 1997. The Zilla Panshad had 46 members out of whom 30 belonged to Telugu Desam Party (TDP for short) and 15 belonged to Congress-I party. Twenty eight members had signed notice of intention to move No-Confidence Motion. It was alleged in the writ petition that they belonged to TDP. It was further alleged that a whip was issued directing the members of the Congress-I Party to abstain themselves from attending the meeting in which the No-Confidence Motion was to be considered. The contention

was that the consequence of issuance of a whip by the Congress-I Party was that the members of that party could not have participated in the meeting held for considering No-Confidence Motion and if any person violated the whip, he would cease to hold the office of Member forthwith in view of the provisions of the Act and his vote would become invalid and would have to be discounted for the purpose of No-Confidence Motion. This being the position, the No-Confidence Motion cannot be passed at all against the Chair-person in the facts and circumstances because the Motion has to be carried with support of not less than two third of the total members.

3. It was argued before the learned single Judge that once a whip is issued, the consequence was that the persons, who violates the whip would stand disqualified immediately and the votes if any cast by them would become invalid ab initio. The votes will have to be ignored. Such argument has been advanced on basis of a decision given by the learned single Judge of this Court in *M. V. Rao v. Election Tribunal-Cum-Sub-Judge 1997 (5) ALD 57*, (i.e. By Justice T.N.C. Rangarajan). However, the learned single Judge before whom the writ petition came up dismissed the writ petition and distinguished the ratio laid down in the *M.V. Rao's case (supra)*.

4. As far as WA No. 1462 of 1997 is concerned, the point raised in the writ petition before the learned single Judge was that though a notice of No-Confidence Motion was given; according to the rules framed under the Act, by 28 persons, no reasons were given in the notice for moving the No-Confidence Motion. It was contended that though there is no express provision in the Act that reasons for initiating No-Confidence Motion have to be given in the notice, it is inherent in the scheme of things that reasons for moving the No-Confidence Motion should be incorporated in the notice. If reasons are not given, the whole provision regarding consideration of No-Confidence Motion becomes arbitrary and violative of the constitutional provisions under Articles 14 and 19. Interim orders were sought, to stay the holding of the meeting of consideration of No-Confidence Motion of the President of Zilla Parishad, Nellore. Interim stay was granted but later on it was vacated by the learned single Judge on application for vacating the interim direction. This writ petition was filed by a member of the Zilla Parishad in which Nagabhushanamma was made a respondent. Aggrieved by the vacation of the said order, the present writ appeal has been filed.

5. It may be stated that as a result of vacation of the stay order, the meeting was held in which a No-Confidence Motion was passed. As per directions of this Court the Minutes of the proceedings have been recorded but no further action has been taken in view of the interim directions of this Court.

6. In support of the appeal filed by Dr. Nagabhushanamma, the learned senior advocate Sri Ramachandra Rao contends that as a whip was issued to the members of Congress-I Party directing them not to attend the meeting of No-Confidence, the vote or votes of any persons, who participated in the meeting in violation of the said whip become non est. It is contended that the provision in

the rules relating to motion of No-Confidence vide G.O. Ms. No.137, Panchayat Raj and Rural Development (Mandal-I) Dept., dated 27-3-1997 (hereinafter referred to as the "Rules") makes this position clear. Reliance is sought on proviso to Rule 8 of the rules. It would be appropriate to extract Rule 8 which reads thus :

"Rule 8 : As soon as the meeting convened under the said rule commences, the said officer shall read to the members of the Gram Panchayat or the Mandal Parishad, or as the case may be to the members of the Zilla Parishad present in the meeting, the Motion for the consideration of which the meeting has been convened and shall be put it to vote without any debate. The voting shall be by show of hands :

(Provided that an elected Member of a recognised political party shall cease to be a member if he votes in disobedience to the directions issued by the party whip.)

Explanation :--(i) A recognised political party means a political party recognised by Election Commission of India, New Delhi,

(ii) Every recognised political party may appoint on behalf of that political party a whip, and such appointment shall be intimated by the State President or a person authorised by him, under his seal and such intimation shall be sent to the said officer so as to reach him before 10.00 a.m. on the day of the meeting convened to conduct the Motion of No-Confidence.

(iii) The said officer shall, on receipt of a written report sent by the Party whip to the effect that a member belonging to his party has disobeyed the whip issued in -connection with the meeting convened to express No-Confidence within three days of the said meeting, declare in Form VII that the said member has ceased to hold office and the order of the said officer shall be final."

The proviso thus says that an elected member of a recognised political party shall cease to be a member if he votes in i sobedience to the directions issued by the party whip. It is argued that the effect of this proviso is that the member, who disobeys the whip direction ceases to be a member immediately. Therefore, the vote of a person, who has ceased to be a member becomes a non entity. In other words, it is submitted that the person suffers not only penalty of cessation of membership but also forfeits the vote which he has given at the concerned meeting. Interpretation sought to be given to the proviso would mean that even before the voting is done by the member, he ceased to be a member. We find it difficult to accept such illogical proposition. We are of the view that the proviso can dismember the person only prospectively from the point of time when the voting is complete. We think that the provision prescribes a penalty for having done something. This provision in our view is incorporated so that a member of the party would not violate the discipline of the party. If he violates the discipline, then certain consequences follow. The consequences follow only when the impugned act is completed. If it is completed then only consequential action follows. The intention of inserting the proviso in our view is not to nullify the vote

which was given at the time when the person was a valid member.

7. Sri Ramchandra Rao says that the point urged by him is squarely covered by a decision of learned single Judge of this Court in M.V. Rao's case (supra). This case was relied upon even before the learned single Judge whose decision is under challenge before us. The learned single Judge has rightly pointed out that the judgment relied upon has no application to the present case. The judgment relied upon was in context of Section 153 of the Act. The present case arises u/s 245 of the Act and the Rules (i.e. the G.O. Ms. No 137) referred above. Relevant provision of Section 153 of the Act is as follows :

"Sec. 153(1) For every Mandal Parishad there shall be one President and one Vice-President who shall be (elected by and from among the elected members specified in Clause (i) of sub-section (1) of Section 149 by show of hands duly obeying the party whip given by such functionary of the recognised political party as may be prescribed). If at an election held for the purpose "no President or Vice-President is elected, fresh election shall be held. The names of the President and the Vice-President so elected, shall be published in the prescribed manner :

Provided that if a member of the Legislative Assembly of the State or of either house of Parliament is elected to either of the said offices, he shall cease to hold such office unless within fifteen days from the date of election to such office, he ceases to be member of the Legislative Assembly of the State or of either house of Parliament by resignation or otherwise,

(Provided further that a member voting under this sub-section in disobedience of the party whip shall cease to hold office forthwith and the vacancy caused by such cessation shall be filled as a casual vacancy)."

Section 245 of the Act is as follows :

"Sec. 245(1) 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 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:

Provided that no notice of Motion under this section shall be made within two years of the date of assumption of office by the person against whom the Motion is sought to be moved;

Provided further that no such notice shall be made against the same person more than once during his term of office.

Explanation :--For the removal of doubts, it is hereby declared that for the purpose of this section the expression "total number of members" means, all the members who are entitled to vote in the election to the office concerned inclusive

of the Sarpanch. President or Chairman but irrespective of any vacancy existing in the office of such members at the time of meeting :

Provided that a suspended office-bearer or member shall also be taken into consideration for computing the total number of members and he shall also be entitled to vote in a meeting held under this section.

(2) If the Motion is carried with the support of not less than two thirds of the total number of members in the case of Upa-Sarpanch, the Commissioner shall and in the case of the President or Vice-President or the Chairman or Vice-Chairman, the Government shall by notification remove him from office and the resulting vacancy shall be filled in the same manner as a casual vacancy."

8. Section 245 of the Act has to be read with the rules. The comparative reading of Section 153 of the Act and the provisions incorporated in Rule 8 of the rules can be made. The proviso of Section 153 of the Act states that member voting in disobedience of party whip ceases to hold office forthwith. As against this, the provision in Rule 8 does not employ the word "forthwith." This is the main difference between the two provisions. It is very pertinent to note that the learned single Judge in M. V. Rao 's case (supra) has pointed out in Para 8 of the judgment that the analogous provision in Schedule X of the Constitution of India does not assist because under the rules in Schedule X the disqualification is not immediate but only after an enquiry. The learned single Judge has therefore interpreted the word "forthwith" to mean that even the vote given by a member violating the whip is to be ignored. The learned single Judge thus was of the opinion that the analogous provisions of the Schedule X of the Constitution were different from the provisions in Section 153 of the Act. In other words, the learned Judge was not prepared to take a similar view in respect of provisions in Schedule X of the Constitution.

9. We have already pointed out that the word "forthwith" on which M. V. Rao's case (supra) depended, is absent in the rules which have to be read with Section 245 of the Act. It would appear that provisions in Schedule X of the Constitution and the rules are substantially similar to the rules with which we are concerned. Under the Schedule X the question regarding disqualification has to be decided by the Chairman or the Speaker, as the case may be, and his decision is final (according to Rule 6). Rule 3(a) of the Schedule X of the Constitution justifies disqualification in case of voting or abstaining from voting contrary to directions issued by the whip, but fifteen days" time is given for condoning such indisciplined voting or abstaining from voting. Under the rules governing the No-Confidence Motion under the Act, Rule 8(iii) gives the power to the Specified Officer. On receipt of written report received from the party whip to that effect that a member belonging to his party has disobeyed the whip, to pass an order in an appropriate form that the member has ceased to hold office. This order is final. Three days" time is granted to the party whip to make a written report to the concerned officer. It will thus be seen that unless a written report is made by the whip within three days from the date of voting or non-voting as the case may

be, there is no occasion for deciding as to whether the member concerned has ceased to be a member or not. The point of time at which the concerned person voting, ceases to be a member is only when the officer concerned declares in Form VII that the member ceased to hold office. Till such declaration is made the person continues to be the member. Therefore, the vote cast by him cannot be ignored. We have already pointed out that the cessation of membership is not forthwith as it is u/s 153 of the Act. The very fact that three days time is granted to the whip to make a written report shows that the whip may or may not make such a report. The whip may condone the act. There may be either reasons, apart from condonation, for the whip not to make a report. Thus there is a fundamental difference between the provision u/s 153 of the Act and the relevant provisions u/s 245 of the Act read with the rules and that makes the learned single Judge's decision inapplicable to the facts of the case.

10. 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 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.

11. We are therefore of the view that the contention urged by Sri Ramachandra Rao is unsustainable. The view taken by the learned single Judge in the impugned judgment appears to us to be the proper and correct one. We do not find any merit in the appeal of Dr. Nagabhushanamma.

12. The contention raised by learned senior advocate Sri Venkat Reddy in the other Writ Appeal is already adverted. Sri Venkat Reddy refers to Rules 3, 4, 8, 9 and 10 of the rules for contending that a fair reading of all these provisions would mean that a Motion of No-Confidence moved u/s 245 of the Act must contain reasons which prompted the persons to sign the Motion of No-Confidence. It is not disputed that neither Section 245 of the Act nor the relevant rules specifically require that reasons for moving the No-Confidence Motion are to be given in the notice or, in the Motion itself. It is argued that if the Motion of

No-Confidence is a single line Motion that the persons moving the Motion have lost confidence in the Chair-person or, that they express No-Confidence in the Chair-person, then there is no purpose in enclosing such a Motion alongwith a notice. It is further argued that Rule 3 requires that a Special Officer has to convene a meeting and preside over it for consideration of the Motion. Rule 4 requires mat the meeting for the purpose of considering the Motion shall not be adjourned for any reason. Rule 8 also provides that there shall be consideration of the Motion. It is urged on the basis of all these rules that consideration of the Motion is required to be done and consideration cannot be done by the members unless they know the reasons for bringing the Motion of No-Confidence. The dictionary meaning of the word "consider" is brought to our notice for urging that consideration incudes thinking and giving an opinion. It is thus contended that the fact that the Motion is required to be considered implicitly means that reasons for moving the Motion have to be given to enable the members to consider the Motion.

13. We think that in the context of the scheme of the Act only a restricted meaning has to be given to the word "consideration", or word "considered" which has been used in various rules. Section 245 of the Act does not envisage any discussion or debate in respect of No-Confidence Motion. A contention was urged that Rule 8 is ultra vires in asmuch as it says that there shall be voting without any debate in the meeting convened for purposes of consideration of No-Confidence. We do not think mat this provision can be said to be ultra vires. As stated above, the substantive section no where says that there shall be a debate or discussion on No-Confidence Motion. On the other hand, the section clearly states that the further action shall be taken in accordance with the procedure prescribed. The prescribed procedure is the one under the rules. In our opinion Rule 8 is not ultra vires as is tried to be argued. On the other hand, the very fact that no debate is to take place as per the prescnbed procedure, clearly goes to show that the word "consideration" was used only for limited purposes. The very act of voting fulfils the requirement and signifies sufficiently as to in what way the particular voter has considered the Motion.

14. As we have already pointed out, holding of an elected office is not a fundamental right of any one. It is only a statutory right. If the statute provides procedure for holding or vacating the said elected office, there is no infringement of any fundamental right of the person occupying the elected office. Voting in or, voting out both are facets of election process. No reasons are required to be given under the principles of natural justice or, under any law for casting a vote in favour of any contesting candidate for an elected office. There is no reason why a different yardstick should be applied for voting out a person from the office if the law prescnbes that a person can be voted out by following certain procedure. Voting, in either of the cases, is purely subjective. The voter is not required to give his reasons, unless the statute specifically provides that for voting out a person from office, in consequence of a No-Confidence Motion, reasons are required to be given. It cannot therefore be argued that non-supply

of reasons for expressing No-Confidence in the office-bearer vitiates the process of passing of a No-Confidence Motion.

15. It was argued with some seriousness that expressing No-Confidence in a person occupying an elected office is a stigma on that person and therefore, the person must be given an opportunity to defend himself. If no reasons are given in the No-Confidence Motion, the concerned person is unable to defend himself. It is also urged that rule of natural justice requires that the concerned person should be given such an opportunity. This argument does not impress us. Passing of a No-Confidence Motion cannot be compared with removal of a person on ground of misconduct. The argument is alright in respect of an action of removal of the elected person on ground of misconduct, upon an enquiry. No-Confidence Motion cannot be compared with that situation. No stigma on the character of the person is attached merely by passing a No-Confidence Motion in a democratic setup. In essence, passing of Motion of Confidence or a Motion of No-Confidence, is a political action. It is evident that unless the elected office bearer enjoys the Confidence of the persons, who have the power of expressing No-Confidence, the said person cannot hold the office. It is not like some quasi-judicial proceeding where allegations and defence is implicit in such process. It is purely within the domain of the Legislature to provide the method of election of the Chairman or for the method of his removal. The method of removal by way of No-Confidence is part and parcel of the democratic process. It cannot be said that Article 14 of the Constitution is violated in any manner. What persuaded the Legislature in not providing a specific provision that reasons should be given for expressing No-Confidence, is purely within the wisdom of the Legislature. We cannot read something which is not there in the statute. We cannot add to what has been stated in the statutory provisions.

16. It was contended on the basis of the decisions in *The Barium Chemicals Ltd. and Another Vs. Sh. A.J. Rana and Others*, *The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others*, and *S.N. Mukherjee Vs. Union of India*, a , that rule of natural justice requires that reasons must be given except in cases where requirement is dispensed with expressly or by necessary implication in any action. If reasons are not given such action is violative of the constitutional provisions. We are unable to find any support in favour of the appellant from these judgments. All these judgments are related to the administrative actions resulting in passing of certain orders. We fail to understand as to how these decisions have any relevance to the present case.

17. Section 245 of the Act is clear and it requires only a Motion expressing want of confidence. The opening words of Section 245 of the Act do not leave any doubt as to what the Motion should be. The Motion is only for expressing want of confidence and nothing more. The section does not say that the Motion should contain reasons or grounds on which the signatories want to express No-Confidence. We think that the provision relating to any electoral process has to be construed strictly. According to us no right of any member including the

Chairman, is violated merely because reasons for expressing No-Confidence have not been given.

18. In the circumstances, we find no merit in both the Writ Appeals. Both the writ appeals are accordingly dismissed. No order as to costs.