

(2003) 10 KAR CK 0072
In the Karnataka High Court
Case No : Writ Appeal No. 5265 of 2003

Savitri

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 13-10-2003

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 11, 2 (6), 42 (9)

Citation : (2003) 6 KarLJ 286 : (2004) 1 KCCR 135

Hon'ble Judges : N.K. Jain, C.J.;V.G. Sabhahit, J

Bench : Division Bench

Advocate : Jayakumar S. Patil, for the Appellant; Sateesh M. Doddamani, A.G.A. for Respondent Nos. 1 and 2 and R.G. Hegde, for Respondent No. 3, B.V. Archarya and B.L. Archarya, for Respondent Nos. 4 to 13, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Sabhahit, J.—This appeal by writ petitioner in W.P. No. 29577 of 2003 is directed against the order dated 30-6-2003 passed by the

learned Single Judge of this Court dismissing the writ petition.

2. The essential facts of the case leading upto this appeal are as follows:

The appellant filed the writ petition alleging that she is the President of the Town Panchayat, Siddapur, Uttara Kannada District (hereinafter called

as "Town Panchayat") arraigned as respondent 3 in the writ petition. It is stated that Town Panchayat comprises of 13 elected Councillors, 3

nominated members and Member of Parliament and Legislative Assembly, totalling to 18. A requisition signed by 10 Councillors was submitted to

move no confidence motion against the petitioner. The Chief Officer did not issue notice to MP and MLA. Notices were issued to Councillors and

nominated members. In the meeting presided over by Vice-President, no

confidence motion against petitioner was passed by 10 Councillors voting in favour of the motion as per the proceedings of meeting Annexure-D, dated 23-6-2003. Being aggrieved by said resolution, the petitioner filed the writ petition before this Court contending that despite the request made by the petitioner no notice of meeting was issued to MLA and MP who have right to vote and the resolution was not supported by 2/3rd members present as according to the petitioner 2/3rd of total members would be 12 and even otherwise 2/3rd of 14 members would be 11 and wherefore, the resolution was not supported by requisite number of members and hence is liable to be quashed.

3. The learned Single Judge by his order dated 30-6-2003 negated the contentions of the petitioner and held that no confidence motion had been validly passed in accordance with law as it was supported by 2/3rd of Councillors present, as the motion was supported by 10 members out of 11 members present and there was no material to show that no notice was issued to MP and MLA apart from the statement of the petitioner and accordingly, dismissed the writ petition.

4. Being aggrieved by the order of the learned Single Judge, the petitioner has filed this appeal. Impleading application was filed to implead applicants as respondents 4 to 13 in this appeal which is opposed by the petitioner and with the consent of learned Counsel for the petitioner, the appeal is taken up for final hearing.

5. The learned Counsel for the appellant Sri Jayakumar S. Patil submitted that the learned Single Judge was not justified in dismissing the writ petition as it cannot be disputed that no notice was issued to MP and MLA who are members of the Town Panchayat entitled to vote and hence entire proceeding is vitiated and no confidence motion is not supported by 2/3rd members of the Town Panchayat which would come to 12 as total number of members is 18 and even otherwise 2/3rd of members present would come to 11 as 14 members were present and motion is supported by 10 members only. He has relied upon the decision of the Supreme Court in *Raees Ahmad Vs. State of U.P. and Others*, and the decision of this Court in *Shambugowda Vs. State of Karnataka and Others*, and *Shanthakumar and Another Vs. City Municipal Council, Chickmagalur*, and submitted that the order of the learned Single Judge is liable

to be set aside and the impugned resolution is liable to be quashed.

6. Sri B.V. Acharya, learned Senior Counsel appearing for impleading applicants, submitted that out of 11 Councillors who were present in

meeting on 23-6-2003, 10 have supported the no confidence motion, which would constitute 2/3rd of Councillors, excluding the nominated

members who have no right to vote and there is no material to show that MP and MLA were not notified, Even otherwise, their presence would

not have materially affected the validity of the resolution and "Councillors" would mean only duly elected Councillors as held by the Division Bench

of this Court in Smt. Chandubi and Ors. v. Deputy Commissioner, Chitradurga and Ors., W.P.No. 12320 of 1997 2000 kar. 4253 and the

impugned order of the learned Single Judge does not suffer from any error or illegality so as to call for interference in this appeal.

7. Sri R.G. Hegde, learned Counsel appearing for respondent 3, submitted that meeting was held in accordance with law and that no confidence

motion was validly passed and hence the learned Single Judge has rightly dismissed the writ petition.

8. We have given anxious consideration to the contention of the learned Counsels appearing for the parties and scrutinized the material on record

and perused the decisions relied upon by the learned Counsels for the parties to find out as to whether the impugned order of the learned Single

Judge calls for interference in this appeal.

9. It is not disputed that Town Panchayat (respondent 3) comprises of 13 elected Councillors and 3 nominated members. In view of the provisions

of Section 11 of the Karnataka Municipalities Act, MP and MLA would also be members. Therefore, total number of members would be 18. It is

also not in dispute that resolution was moved by requisite number of Councillors and in the meeting specially convened on 23-6-2003, 11 elected

Councillors and 3 nominated members were present and motion of no confidence against the petitioner was supported by 10 elected Councillors.

It is not disputed that nominated members have no right to vote. The only point that is required to be considered is whether no confidence motion

supported by 10 out of 11 Councillors present in the meeting on 23-6-2003 would be a valid resolution. The contention of the petitioner is that no

notice was issued to MP and MLA and the proceeding of meeting is vitiated as

they are also entitled to vote in view of the provisions of Section

11 of the TMC Act and 2/3rd of requisite members of Town Panchayat did not support the no confidence motion as according to the Counsel

2/3rd of total number of members would be 12 and 2/3rd of number of requisite members would be 10.66 which has to be treated as 11 and

wherefore the resolution is not supported by requisite number as required u/s 42(9) of the Act.

10. Relevant provisions of Section 11 of the Karnataka Municipalities Act, 1964 (hereinafter called as "the Act") necessary for the purpose of this

case are as follows:

11. Constitution of municipal councils.--(1) The municipal council shall consist of:

(a) such number of directly elected Councillors specified in column (3) of the table below in respect of the municipal areas specified in the

corresponding entries in column (2) thereof, namely.-

TABLE

Sl Population of the municipal area No of

No. Councillors

1 for a municipal area with a population of 23

not less than 20,000 but less than 40,000

2 for a municipal area with a population of 27

not less the in 40,000 but less than 50,000

3 for a municipal area with a population of 31

not less than 50,000 but less than one lakh

4 for a municipal area with a population of 35

not less than one lakh but less than three

lakhs

(b) not more than five persons nominated by the Government from amongst the residents of the municipal area and who are.-

(i) persons having special knowledge and experience in municipal administration or matters relating to health, town planning or education; or

(ii) social workers;

(c) the members of the house of the people and the members of the State

Legislative Assembly, representing a part or whole of the municipal area whose constituencies lie within the municipal area;

(d) the members of the Council of States and members of the State Legislative Council registered as electors within the municipal area"".

Section 42(9) of the Act reads as follows:

(9) Every President and every Vice-President of a municipal council shall forthwith be deemed to have vacated his office if a resolution expressing want of confidence in him is passed by a majority of not less than two-thirds of the total number of Councillors at a special general meeting convened for the purpose:

Provided that no such resolution shall be moved unless notice of the resolution is signed by not less than one-third of the total number of

Councillors and at least ten days notice has been given of the intention to move the resolution:

Provided further that where a resolution expressing want of confidence in any President or Vice-President has been considered and negatived by a

municipal council, a similar resolution in respect of the same President or Vice-President shall not be given notice of or moved within one year from

the date of the decision of the municipal council"".

11. The above said provisions of the Act, with which we are concerned in the present case, regarding requisite majority and as to whether total

number of members of the Council should be considered for reckoning such majority had been specifically referred to a Division Bench of this

Court in view of the conflicting decisions by learned Single Judge of this Court and the Division Bench in W.P. No. 12320 of 1997, DD: 10-12-

1997. After considering the relevant provisions with which we are concerned in the present case the Division Bench held that "Councillor" in

Sections 2(6) and 42(9) of the Act means legally elected members and overruled the decision in S. Shivashankarappa and Others Vs. The

Davangere City Municipality, Davangere and Others, and answered referred questions as follows.-

9. In conclusion answering the reference we hold that:

(i) in order to quantify the two-thirds of the total number of Councillors, it is only the Councillors who are eligible and entitled for voting which has

to be considered and as the nominated members u/s 11(1)(b) of the Act have no right to vote their number has to be excluded; and

(ii) the two-thirds of the members for the purpose of "no confidence motion" is to be from and out of total number of Councillors present at the meeting and not the general total number",

12. There is no merit in the contention of the learned Counsel for the appellant that above decision does not hold the field in view of the decision of

the Supreme Court in *Raees Ahmad's case*, supra, as in the said decision Hon'ble Supreme Court was dealing with the provisions of Section 87-

A of the Uttar Pradesh Municipalities Act, 1916 which reads as follows as quoted in para 3 of the said decision;

3. Section 87-A of the Uttar Pradesh Municipalities Act, 1916 deals with a motion of no confidence against the President. Sub-section (12)

thereof reads:

(12) The motion shall be deemed to have been carried only when it has been passed by a majority of two-third of the total number of members of the Municipality".

Section 9-D of the said Act deals with the composition of a Municipality and states that it shall consist of a President, elected members, ex officio

members and nominated members. Nominated members are mentioned in Sub-clause (d) thereof and the proviso thereto states:

Provided that the persons referred in Clause (d) shall not have the right to vote in the meetings of the Municipality" "".

13. In the present case, we are dealing with the provisions of the Act referred to above which are different from the provisions of Uttar Pradesh

Act as the words used in Section 42(9) is ""two-thirds of the total number of Councillors at a special general meeting convened for the purpose

and not ""two-thirds of the total number of members of Municipality"" as used in Uttar Pradesh Act. It is held by the Supreme Court in *Ashwani*

Kumar Singh Vs. U.P. Public Service Commission and Others, as follows

-""Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on

which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must

be read in the context in which they appear. Judgments of Courts are not to be

construed as statutes"".

14. The other decisions relied upon by the appellant's Counsel is not helpful to the present case as Shanthakumar's case, supra, is contrary to the

Division Bench decision of this Court in Smt. Chandubi's case, supra and the learned Single Judge has relied upon the decision of the Supreme

Court in Raees Ahmad's case, supra, which is not applicable as held above and the decision in S. Shivashankarappa's case, which has been

overruled by the Division Bench in Smt. Chandubi's case. The other decision in Shambugowda's case, supra has dealt with the provisions of the

Karnataka Agricultural Produce Marketing Committee Act wherein the wordings are entirely different from the provisions of the Act with which

we are concerned in the present case.

15. When admitted facts of the present case are considered in the light of the provisions of the Act and the decision of the Division Bench in Smt.

Chandubi's case, it is clear that no confidence motion has been passed in a meeting specially convened for the purpose on 23-6-2003 and out of

11 elected Councillors, 10 Councillors have supported the no confidence motion which would be by more than two-thirds of total number of

Councillors as required u/s 42(9) of the Act.

16. There is no merit in the contention of the learned Counsel for the appellant that non-issuance of notice to MP and MLA and their absence in

the meeting has vitiated the proceedings. It is also the contention of the learned Counsel that the term "Councillor" has been defined u/s 2(6) of the

Act as any person who is legally a member of the Municipal Council or Town Panchayat. In view of the decision of the Division Bench of this

Court in Smt. Chandubi's case which still holds the field it is clear that for the purpose of Section 42(9) of the Act in order to quantify the total

number of Councillors it is only the Councillors who are eligible and entitled for voting whose number has to be considered and the term

"Councillor" referred to in Section 2(6) would only mean ""legally elected member and not otherwise"" and further, the petitioner/appellant has not

substantiated the contention as to how the proceedings of the meeting dated 23-6-2003 is materially affected by the alleged non-issuance of notice

to MP and MLA. When the admitted facts in the present case are considered in the light of the decision of the Division Bench of this Court in Smt.

Chandubi's case referred to above, it is clear that in the meeting which was specifically convened for the purpose of considering the no confidence

motion on 23-6-2003 by giving requisition in accordance with law, 11 Councillors and 3 nominated members were present, the no confidence

motion was supported by 10 elected Councillors and therefore, the resolution is passed by not less than 2/3rd of the elected Councillors who were

present at the meeting on 23-6-2003 called specifically for considering the question of no confidence motion. There is no merit in the contention of

the learned Counsel appearing for the appellant that the resolution is not supported by the requisite number of not less than 2/3rd of the total

number of Councillors as it is clear from the order of the Division Bench of this Court that in order to quantify 2/3rd number of Councillors it is only

the number of Councillors who are eligible and entitled for voting and present at the meeting that has to be taken into account and even assuming

that the MP and MLA had also right to vote, that would not affect the resolution as 2/3rd of number of members for the purpose of no confidence

motion is from and out of the total number of Councillors present at the meeting and not the general total number. In view of the above, it is clear

that the learned Single Judge has held that the no confidence motion against the petitioner was validly passed against the petitioner in accordance

with law in the meeting held on 23-6-2003 and that too with the support of not less than 2/3rd of the number of Councillors as required u/s 42(9)

as out of 11 Councillors present in the meeting 10 Councillors have voted in favour of the motion for no confidence against the petitioner and we

do not find any error or illegality in the order so as to call for interference in this appeal.

Accordingly, we hold that there is no merit in this appeal and pass the following order.

The appeal is dismissed.