

(2015) 08 KAR CK 0207

In the Karnataka High Court

Case No : Writ Petition Nos. 201399 and 201754/2015 (LB-RES)

Shahjaha and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 26-08-2015

Acts Referred:

Citation : (2015) 4 AKR 790

Hon'ble Judges : H.G. Ramesh, J

Bench : Single Bench

Advocate : R.J. Bhusare and G.R. Gurumath, for the Appellant; A. Syed Habeeb, AGA, Advocates for the Respondent

Final Decision : Disposed off

Judgement

H.G. Ramesh, J—The question raised in these writ petitions is whether the members of the house of the people (Lok Sabha) and the members of the State Legislative Assembly (Vidhan Sabha), whose constituencies lie within a municipal area, have voting right at a Special General Meeting convened under Section 42(9) of the Karnataka Municipalities Act, 1964 ("the Act") for the purpose of moving a no-confidence motion against the President and Vice President of a Municipal Council?.

The question is answered in the negative.

2. In these writ petitions, the petitioners are challenging the resolution dated 28.01.2015 passed by the Municipal Council expressing "no-confidence" against petitioner No. 1 resulting in her removal from the post of the President of the City Municipal Council, Basavakalyan. The total number of Elected Councillors is 31. It is not in dispute that twenty councillors of the Municipal Council, and, respondent No. 4, who is a member of the Lok Sabha and respondent No. 5, who is a member of the Vidhan Sabha, whose constituencies lie within the municipal area of Basavakalyan, had voted in favour of the no-confidence motion and 11 councillors voted against the no-confidence motion.

3. I have heard the learned counsel appearing for the parties and perused the record.

4. Sri G.R. Gurumath, learned counsel appearing for the petitioners submitted that members of the Lok Sabha and members of the Vidhan Sabha referred to in Section 11(1)(c) of the Act are not Councillors, and therefore, voting by respondent Nos. 4 & 5 for the no-confidence motion is illegal, and hence, removal of petitioner No. 1 from the post of the President of the Municipal Council, pursuant to such a no-confidence motion is unsustainable in law. In support of his submission, he relied on an unreported decision of a Division Bench of this Court in Smt. Chandubi v. The Deputy Commissioner in W.P. No. 12320 of 1997 (DD 10.12.1997) and also another Division Bench decision of this Court in Smt. Savitri Vs. The State of Karnataka and Others, (2003) ILR (Kar) 4653 .

5. Learned counsel appearing for respondent Nos. 6 to 8 submitted that the persons specified in Section 11(1)(c) of the Act are also Councillors and, hence, they also have the right to vote at a Special General meeting convened for the purpose of moving a no-confidence motion against the President and Vice President of a Municipal Council.

6. Learned Additional Government Advocate submitted that members of the Lok Sabha and members of the Vidhan Sabha have no right to vote at a Special General meeting convened for the purpose of moving a no-confidence motion as they are not elected Councillors of a Municipal Council.

7. To examine as to whether members of the Lok Sabha and members of the Vidhan Sabha, whose constituencies lie within a municipal area, have voting right at a Special General meeting convened for the purpose of moving a no-confidence motion against the President and Vice President of the Municipal Council, it is relevant to refer to the following provisions of the Act:

"Section 2(6). "Councillor" means any person who is legally a member of a municipal council or Town Panchayat.

Section 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:

(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;

Provided that the persons referred to in clause (b) shall not have the right to vote in the meetings of the municipal council.

.....

Section 18. Term of office of Councillors: (1) The term of a councillor,-

(a) elected at a general election shall be five years:

(b) nominated under clause (b) of sub-section (1) of Section 11 shall, subject to the pleasure of the Government be five years;

(1-A) The term of office of the councillor elected at a general election or nominated in clause (b) of sub-section (1) of Section 11 shall commence on the date appointed for the first meeting of the municipal council.

.....

Section 42. President and Vice-President: (1) For every municipal council, there shall be a President and a Vice-President.

(2) Subject to the provisions of sub-section (2-A) the Councillors shall at the first meeting of the Municipal Council after the general election and at a subsequent meeting held immediately before the expiry of term of office of the president and vice president choose two members from amongst the elected councillors to be respectively president and Vice-President and so often as there is a casual vacancy in the office of the President, or Vice-President shall choose another member from amongst the elected councillors to be the President or Vice-president, as the case may be.

.....

(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 the total number of Councillors having voting right and by a majority of not less than two-thirds of the Councillors having voting right present and voting 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 having voting right 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.

....."

8. As could be seen from Section 18 extracted above, only the persons who are directly elected as Councillors under Section 11(1)(a) of the Act and the persons nominated under Section 11(1)(b) of the Act are recognized as Councillors of the Municipal Council and their term of office is also specified. As per the proviso to Section 11(1) of the Act, the persons nominated under Section 11(1)(b) of the Act have no voting right in the meetings of the Municipal Council. Therefore, Councillors referred to in Section 42(2) of the Act shall mean only the elected councillors who shall choose the President and Vice President of a Municipal Council.

9. The persons referred to in Section 11(1)(c) & (d) are not recognized as Councillors anywhere in the Act. If the intention of the legislature was to treat them as Councillors, it would have so provided in the Act. In my opinion, a conjoint reading of Sections 11 & 18 of the Act will show that "the Councillors" referred to in Section 42(9) of the Act shall mean only the elected councillors.

10. In view of the above, only the elected Councillors have the right to choose the President and Vice President of a Municipal Council and similarly, only the elected Councillors have the right to pass a no-confidence motion against the President and Vice President of a Municipal Council.

11. Members of the Lok Sabha, Vidhan Sabha, Rajya Sabha and Vidhan Parishad referred to in Section 11(1)(c) & (d) of the Act, though have the right to vote in general meetings of the concerned Municipal Council in view of the proviso to Section 11(1) of the Act, they are not given the right to vote at a Special General meeting convened under Section 42(9) of the Act for the purpose of moving a no-confidence motion. As stated above, only the elected Councillors are entitled to vote at such a meeting. As only the Elected Councillors have the right to vote at a Special General meeting convened under Section 42(9) of the Act for the purpose of moving a no-confidence motion, the persons referred to in Section 11(1)(b), (c) & (d) of the Act have no right to vote, and, consequently, it is not permissible for them to attend a Special General meeting and, therefore, they shall not be notified of the Special General meeting. Their presence at such a meeting will unduly influence the elected councillors present at the meeting and hence, their attendance and/or voting at such a meeting will render the no-confidence motion illegal and void.

12. Respondent No. 4, who is a member of the Lok Sabha and respondent No. 5, who is a member of the Vidhan Sabha, who had no right to vote, had attended the Special General meeting held on 28.01.2015 and voted for the no-confidence

motion dated 28.01.2015 (Annexure-A). Therefore, the resolution dated 28.01.2015 (Annexure-A) passed by the Municipal Council expressing no-confidence against petitioner No. 1 is liable to be set aside being illegal and void, and it is accordingly set aside. It is clarified that, as the impugned no-confidence motion is held to be void, the second proviso to sub-section (9) of Section 42 of the Act will not come in the way of the elected councillors for moving a fresh motion of no confidence against petitioner No. 1.

The writ petitions stand disposed of in terms stated above.