

(2004) 11 KAR CK 0021
In the Karnataka High Court
Case No : Writ Petition No. 46303 of 2004

Shanthabai B. Bohi

APPELLANT

Vs

The Chief Executive Officer, Zilla Panchayath and Others

RESPONDENT

Date of Decision : 24-11-2004

Acts Referred:

Karnataka Panchayat Raj Act, 1993 — Section 140, 141 (2) (a)

Citation : (2005) 2 KarLJ 264 : (2005) 1 KCCR 154

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : N. Kiran, for the Appellant; H.B. Narayana, High Court Government Pleader for Respondents-2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—This is the case of an Adhyaksha, who has lost her post, as a motion expressing lack of confidence was carried by the requisite number of members of the Chincholi Taluk Panchayat, who has approached this Court for relief inter alia contending that the procedure followed for fixing the date of meeting and conducting the special meeting was not in consonance with the relevant provisions viz., Section 141(2)(a) of the Karnataka Panchayat Raj Act, 1993. Petitioner has sought for quashing the proceedings in the special meeting held on 18-11-2004 and for other incidental relief.

2. Sri Kiran, learned Counsel for the petitioner submits that the petitioner though was the Adhyaksha of the Panchayat, was totally kept in dark with regard to either convening of the meeting or the holding of the meeting; that the petitioner was never given any requisition for convening a special meeting of the Panchayat; that even without any failure on the part of the Adhyaksha, Upadhyaksha and other members had colluded with the Upadhyaksha fixing a special meeting of the Panchayat in terms of a notice dated 10-11-2004, which in fact was never served on the petitioner and that they had fixed the meeting to be held on 18-11- 2004 a day on which the petitioner was not in station and

have now claimed that the resolution is carried in terms of the recordings of the 4th respondent-Executive Officer, Taluk Panchayat dated 18-11-2004, which are all illegal for non-compliance with the requirements of Section 141(2)(a) of the Act and as such both the resolutions as well as the notice fixing the meeting should be quashed.

3. Petitioner is not disputing that a meeting of this nature did take place on 18-11-2004 and the resolution expressing lack of confidence in the petitioner was supported by as many as 14 members of this panchayath, while the total membership of the Panchayat is 18.

4. The number of members, who have supported the resolution that is the no-confidence motion against the Adhyaksha is clearly more than 2/3rds of the total membership of the Panchayat. Sub-section (3) of Section 140 indicates that:

"Every Adhyaksha and every Upadhyaksha of the Taluk Panchayat shall be deemed to have vacated his office forthwith if a resolution expressing want of confidence in him is passed by a majority of the total number of elected members of the Taluk Panchayat at a meeting specially convened for the purpose".

While the first part of this Section is not in dispute, what is sought to be disputed is that the manner of calling the special meeting, was not in consonance with the provisions of Section 141(2)(a) of the Act as such the entire proceedings are to be quashed.

5. A reading of the provisions of Section 140 along with the provisions of Section 141 indicates that the removal of the Adhyaksha/ Upadhyaksha occurs by the operation of law when once not less than 2/3rds of the members of the Panchayat have voted supporting a motion of no- confidence. While the occurrence of removal is the substantive part achieved by the operation of the provisions of Section 140 of the Act, Section 141 provides for the procedure for initiating the process of notifying the meetings of the Panchayat. Ultimately what matters is what resolutions are passed in such meetings and to make such a resolution valid or invalid depending on the procedure through which a meeting is called for is in my opinion placing a premium on the procedure rather than looking at the substance of the matter. In the present case the stage is reached where the provisions of Section 140 has operated, whether through a proper procedure or without following the procedure u/s 141 as alleged in the petition.

6. While the assertion of the petitioner that such procedure has not been followed is a matter for verification which may be so or not so, the fact that not less than 2/3rds of the members of the Panchayat have supported such a resolution expressing lack of confidence in the petitioner to remain in the post of is not in dispute, and as such there is no dispute about the substantive part which automatically has the effect of putting into operation Sub-section (3) of Section 140 of the Act and the petitioner is deemed to have vacated the post.

7. I am of the view that such a process cannot be reversed at this point of time merely based on certain procedural irregularities involving violation of the provisions of Section 141(2)(a) of the Act.

8. Ultimately what is sought in the writ petition is not only for quashing of the resolution but also to restore the petitioner to the post of Adhyaksha. I am afraid this cannot be achieved when once the petitioner is deemed to have been removed from the post by operation of law. It is not as though a writ can be issued in all situations, even in a situation where the process has become irreversible.

9. Ultimately in a democratic system what matters is that persons getting elected to the posts can remain in the post so long as they enjoy the support of the requisite number of members of the body of which they aspire to be President or Vice-President. If the very members express lack of confidence. I am of the view that nothing more is required and by calling in aid technicalities, such persons cannot remain or cling on to the post, even if the very members who have elected have subsequently expressed lack of confidence in such persons.

10. I am of the view that a writ as prayed for cannot be issued in such circumstances. No interference is called for in the exercise of writ jurisdiction in such situation. Accordingly this writ petition is dismissed.