

(2000) 08 KAR CK 0063

In the Karnataka High Court

Case No : Writ Petition No's. 10026 and 10027 of 2000

Shanthakumar and Another

APPELLANT

Vs

City Municipal Council, Chickmagalur

RESPONDENT

Date of Decision : 25-08-2000

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 42, 42 (9)

Citation : (2000) ILR (Kar) 4253 : (2001) 2 KarLJ 91 : (2000) 4 KCCR 2567

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : Sri T. Narayanaswamy, for the Appellant; Sri Abdullah, for the Respondent

Judgement

1. The first petitioner is the President and the second petitioner is the Vice-President of the respondent-City Municipal Council, Chickmagalur (hereinafter referred to as "the Municipal Council").

2. In those petitions, the petitioners have prayed for quashing the notice dated 15th of March, 2000, a copy of which has been produced as Annexure-A to these petitions, issued by the respondent for convening a special meeting on 24th of March, 2000 of the members of the Municipal Council, to consider the motion of want of confidence moved against the petitioners. Since, during the pendency of the proceedings before this Court, the want of confidence motion moved against the petitioner is passed, the petitioners have also prayed for quashing the said resolution dated 24th of March, 2000 of the Municipal Council.

3. Sri Narayanaswamy, learned Counsel appearing for the petitioners, in support of the prayer of the petitioners that the impugned resolution passed expressing want of confidence against the petitioners is liable to be quashed, made two submissions. Firstly, he submitted that the resolution has not been passed by two-thirds of the total number of members of the Council in terms of sub-section (9) of Section 42 of the Act. Therefore, he submits that the petitioners continue to be the President and Vice-President of the Municipal Council. Elaborating this

submission, he pointed out that two-thirds of the total number of councillors referred to in sub-section (9) of Section 42 of the Act, means all the members who constitute the Council in terms of Section 11(1) (a)(c) and (d) of the Act. In support of this submission, he relied upon the decision of the Supreme Court in the case of *Raees Ahmad v State of Uttar Pradesh and Others* and also that of this Court in the case of *S. Shivashankarappa and Others Vs. The Davangere City Municipality, Davangere and Others*, . He also pointed out that two-third of the total number of members of the Municipal Council should not be understood as two-third of the total number of members who are present at the meeting of the Council. Secondly, he submitted that five of the nominated members of the Council were not served with the notice of the meeting; and, therefore, even if it is held that the said nominated members are not entitled to be considered for the purpose of counting two-thirds of the total number of members in terms of sub-section (9) of Section 42 of the Act and they are not entitled to vote while considering the motion of want of confidence moved against the petitioners, still they are entitled to be served with the notice of the meeting, so that they could express their views in the meeting; and since admittedly the same has not been done, the impugned resolution is vitiated.

4. However, Sri Abdullah, learned Counsel appearing for the respondent-Municipal Council, in response to the contention of Sri Narayanaswamy, strongly urged that two-thirds of the total number of the councillors must be understood as two-thirds of the total number of elected members of the Council in terms of Section 11(1)(a) of the Act. In support of this submission, he referred to sub-section (2) of Section 42 of the Act wherein it is provided that the President and Vice-President of the Council are elected from amongst the elected members of the Council. Secondly, he submitted that two-thirds of the total number of Councillors, referred to in sub-section (9) of Section 42 of the Act, must be understood as two-thirds of the total number of members present in the meeting and not the two-thirds of the total number of members of the Council. Therefore, he submitted that since, out of 27 members of the Council, who were present in the meeting, 21 members had expressed their want of confidence, the petitioners are deemed to have vacated their office in terms of sub-section (9) of Section 42 of the Act. He also pointed out that out of five nominated members, two of the members have resigned and the Government had also directed all the nominated members to resign; and that being the position, five of the members cannot be taken into account while deciding two-thirds of the total number of members of the Council and they are also not entitled for the meeting notice. He also pointed out that since one of the members of the Council has expired, the total number of elected members of the Council should be taken only also as thirty.

5. In the light of the rival contentions addressed by the learned Counsel appearing for the parties, the two questions that would arise for consideration, in these petitions, are.-

(1) Whether the nominated members of the Municipal Council are required to be taken into account for the purpose of calculation of two-thirds of the total number of members of the Council required to pass motion of want of confidence against the President and the Vice-President of a Municipal Council?

(2) Whether the nominated members of the Municipal Council are required to be served with the notice of the meeting convened to consider the motion of want of confidence moved against the President and the Vice-President of the Municipal Council?

6. To consider the above two questions, it will be useful to refer to the undisputed facts and the relevant provisions of the Karnataka Municipalities Act, 1964 (hereinafter referred to as "the Act").

(a) Section 11 of the Act provides for the constitution of the Municipal Council. It is useful to refer to sub-section (1) of Section 11 of the Act, which reads as hereunder:

"(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:-

Particulars

Relevance

Where document is held

1. Copy of the letter by HO:LRO:ZO directing the branch to file a suit in 1984 on the sticky liabilities of Rs. 27 lacs.

To show that there was a irregular balance to the tune of Rs. 27 lacs when Rs. 18 lacs were sanctioned and to show that the Bank at one stage had decided to file a suit but the same was not filed by the branch authorities.

Held with HO/Lucknow Zonal Office/Moradabad Branch.

(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 of whole of the municipal area whose constituencies lie within the municipal area and who are registered as electors 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".

It is not in dispute that the elected members of the respondent-Municipal Council are thirty-one and five councillors were nominated by the Government in terms of clause (b) of sub-section (1) of Section 11 of the Act. It is also not in dispute that there is a Member of the Legislative Assembly and a Member of the Parliament who also constitute members of the Council in terms of Section 11(1) (c) of the Act. Thus, the total number of members of the Council in terms of Section 11(1) of the Act, is thirty-eight. Out of thirty-one elected members, one member, it appears, has expired. Further, according to the respondent, all the five nominated members have resigned pursuant to the Circular dated 15th of October, 1983, a copy of which has been produced as Annexure-R3, issued by the Government. However, the petitioners assert that out of five nominated members, only two of the nominated members, namely, M.R. Durgappa and M. Sundara Shetty, have submitted their resignation and three others have not submitted their resignation; and even with regard to the said two members, who have tendered resignation, their resignation having not been accepted, they continue to be the members of the Council.

(b) Sub-section (1) of Section 42 of the Act provides that there shall be a President and Vice-President for every Municipal Council. Sub-section (2) of Section 42 of the Act provides that the councillors shall, at the first meeting of the Municipal Council after the General election, choose two members from amongst the elected councillors as President and Vice-President of the Council. Sub-section (9) of Section 42 of the Act provides that every President and Vice-President of the Municipal Council is deemed to have vacated his office if a resolution expressing want of confidence against him is passed by not less two-thirds of the total number of councillors at a special meeting convened for the purpose. It is useful to refer to sub-section (9) of Section 42 of the Act, which reads as hereunder:

"(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 solution:

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".

(c) Section 47 of the Act, provides for convening the meeting of the Councilors. Section 48 of the Act, provides for the notice of the meeting.

7. Having set out the relevant facts of the case and the provision of law, let me now examine the first question that would arise for consideration in these petitions. From the plain reading of sub-section (9) of Section 42 of the Act, it is clear that if two-thirds of the total number of Councilors at a special general meeting pass a resolution expressing want of confidence, the President or the Vice-President of a Municipal Council would statutorily vacate his office. Therefore, the question is what is the meaning that is required to be attached to the words "two-thirds of the total number of Councilors" referred to in sub-section (9) of Section 42 of the Act. As noticed by me earlier, Section 11 of the Act provides for the constitution of a Municipal Council. Sub-section (1) of Section 11 of the Act provides that a Municipal Council shall consist of persons referred to in clauses (a) to (d) of the said sub-section. Sub-section (6) of Section 2 provides that, "Councillor" means any person who is legally a member of a Municipal Council. Therefore, not only the persons who are directly elected as councillors in terms of clause (a) of sub-section (1) of Section 11 of the Act, would be the councillors of a Municipal Council, but also the persons nominated under clause (b) of sub-section (1) of Section 11 and the members of the House of People and the members of the State Legislative Assembly referred to in clause (c) and members of the State Legislative Council referred to in clause (d) of sub-section (1) of Section 11 of the Act would be the Councilors. Therefore, in the instant case, thirty-one elected members of the Council, five persons nominated by the Government and one Member of the Legislative Assembly and one Member of the Parliament, in all thirty-eight, would constitute the councillors of the Municipal Council. From the language employed in sub-section (9) of Section 42 of the Act, it is clear that every President and Vice-President is deemed to have vacated his office of a resolution expressing want of confidence is passed by a majority of not less than two-thirds of the total number of the councillors at a special general meeting convened for the said purpose. In my view, "the total number of Councilors" means such number of councillors who fall under clauses (a) to (d) of sub-section (1) of Section 11 of the Act. Merely because only elected members are entitled to be elected as President and Vice-President of a Municipal Council and only the elected members of the Municipal Council are entitled to vote and choose amongst themselves the President and Vice-President of the Municipal Council, from that it would not follow that only the elected members i.e., the persons falling under clause (a) of sub-section (1) of Section 11 alone are entitled to be counted for the purpose of calculating two-thirds of the total number of councillors as contended by Sri Abdullah. Further, one other question that would arise for consideration is whether two-thirds of the total number of councillors contemplated under sub-section (9) of Section 42 of the Act must be understood as two-third of the total number of councillors present at the meeting as contended by Sri Abdullah. On this question, I am

inclined to accept the submission of Sri Narayanaswamy that two-thirds of the total number of members of the Council must be understood as two-thirds of the total number of members of the Council, but not the two-thirds of the total number of members of the Council who are present at the meeting. If the intention of the Legislature was that two-thirds of the total number of councillors present would be sufficient to express want of confidence motion moved against the President or Vice-President, the language employed in sub-section (9) of the Section 42 of the Act would have been to the effect two-thirds of the total number of councillors present at a special general meeting convened for the purpose. As it can be seen from sub-section (9) of Section 42 of the Act, the word "present" is absent. It is well-settled principle of interpretation that when a language in a statute is plain, clear and unambiguous, it is the duty of the Court to give effect to the plain meaning attached to the provision in a statute. That being the law relating to interpretation of statutes, as noticed by me earlier, I am unable to accept the contention of Sri Abdullah that two-thirds of the total number of councillors present would be sufficient to pass a motion expressing want of confidence against the President or Vice-President of the Municipal Council. The decision of the Supreme Court in the case of Raees Ahmad, *supra*, relied upon by Sri Narayanaswamy, supports the view I have taken above. While considering the similar provision which provided for passing of motion of want of confidence against the President of the Municipal Council, the Supreme Court took the view that even the nominated members are part of the composition of the Municipality and while calculating the majority of two-thirds of the total number of members of the Municipal Council, nominated members should also be taken into account. It is useful to refer to paragraphs 4 and 5 of the judgment, which read as hereunder:

"4. It will be noticed that nominated members are part of the composition of the Municipality and are referred to in the statute as the nominated members thereof. For the purpose of finding whether a motion of no-confidence against the President has been carried, what has to be seen is whether it has been passed by "a majority of two-thirds of the total number of members of the Municipality". There can be no doubt, therefore, that on a plain construction of the statute the number of the nominated members has to be taken into account in determining whether or not a motion of no-confidence against the President has been carried.

5. On behalf of the respondents emphasis is laid upon the proviso quoted above which states that nominated members shall not have the right to vote in the meetings of the Municipality. It is contended that inasmuch as the nominated members do not have the right to vote in the meetings of the Municipality, they should not be counted as part of the total number of the members of the Municipality, two-third of whose vote in favour is requisite for the passage of the motion of no-confidence. We find it difficult to accept this submission, given the plain words of the provisions quoted above. That nominated members may not vote does not imply that they cease to be members of the Municipality or that their number should be ignored in determining whether the President has lost

the confidence of two-thirds of the members. So calculated, the vote of confidence against the President had not been carried as required".

Further, in the case of S. Shivashankarappa, supra, relied upon by Sri Narayanaswamy, this Court (Rama Jois, J., as he then was) has taken the view that the requisite majority of the two-thirds of the councillors required for a resolution expressing want of confidence has to be calculated on the basis of "total number of Councilors" and not on the basis of the "number of existing Councilors". In the said case, the question that had arisen for consideration was that since the office of one of the elected councillors had fallen vacant, whether the vacancy that had been caused should be taken into consideration or not? The Court, at paragraph 10 of the judgment, observed as follows:

"10. ...Therefore, the total number of councillors referred to in Section 42(9) of the Act has reference to the number of Municipal councillors fixed u/s 11 of the Act. I am unable to accept the contention urged for the petitioners that the requisite majority of two-thirds of the councillors required for a resolution expressing want of confidence which has the effect of removing a person from the office of a President or a Vice-President as the case may be, u/s 42(9) of the Act, has to be calculated only with reference to the existing number of Councilors. ...If the intention of the legislature was that the two-thirds of the existing number of Councilors, on any given day, when a resolution expressing want of confidence is passed against a President or a Vice-President as the case may be, alone should be taken into account, the legislature would have used the words "existing number of Councilors" instead of the words "total number of Councilors" in Section 42(9) of the Act. The acceptance of the contention of the petitioners would amount to substituting the word "existing" in place of the word "total" in Section 42(9) of the Act, which is not permissible. There is also a specific legislative object in prescribing the stringent requirement of two-thirds of the total number of councillors for passing a resolution against the President or Vice-President as the case may be, expressing want of confidence. Under the Act, a President or a Vice-President of a Municipal Council can be elected by the votes of an ordinary majority of members present and voting. Having been so elected, Presidents and Vice Presidents hold important and high executive offices under the Act in the concerned Municipal Council. The legislature has thought fit to provide security of tenure in the interest of ensuring the proper discharge of duties and responsibilities of President or Vice-President as the case may be, without the fear of being removed from the respective offices by the change of loyalties of a few Municipal Councilors. It is with this object in view that the majority of two-thirds of the total number of councillors has been prescribed for the validity of a resolution expressing want of confidence against a President or a Vice-President, as the case may be, u/s 42(9) of the Act. Therefore, this provision has to be construed strictly, when it is so construed, the conclusion is inevitable that the requisite majority of two-thirds of the councillors for the purpose of sub-section (9) of Section 42 of the Act, has to be calculated on the basis of the "total number of Councilors" and not on the basis of the "number of

existing Councilors".

8. The only other question that remains to be considered is whether the nominated members of the Municipal Council are required to be served with the notice of the meeting convened to consider the motion of want of confidence moved against the President or Vice-President of the Municipal Council?

9. No doubt, as contended by Sri Abdullah, only the elected member of the Council are entitled to be elected as President and Vice-President of the Council; and it is only the elected members of the Council who are entitled to vote in the election to the office of the President and Vice-President of the Municipal Council in terms of sub-section (2) of Section 42 of the Act. But, as noticed by me earlier, the President and Vice-President of the Municipal Council will vacate the office if no less than two-thirds of the total number of councillors which include the members falling u/s 11(1) (b), (c) and (d) of the Act, pass a resolution expressing want of confidence in the President and Vice-President of the Municipal Council. Therefore, there cannot be any doubt that all the Councilors, who have not vacated their office, are entitled for the notice of the meeting convened to consider the motion of want of confidence moved against the President or Vice-President. Further, it is also necessary to point out that even though the nominated members are not entitled to vote while considering the resolution moved expressing want of confidence against the President and Vice-President of the Municipal Council, since they are still the members of the Municipal Council, they are entitled to be served with the notice of the meeting convened to consider the motion of want of confidence moved against the President or Vice-President of the Municipal Council. Section 48 of the Act provides for issue of notice of the meeting to the Councilors. It does not make any distinction between the elected Councilors, and other Councilors. The Councilors, in the context, must be understood as all the existing councillors of the Municipal Council. Therefore, as noticed by me earlier, notice of the meeting was required to be given to all the existing Councilors. The articulation by such of those members even though they are not entitled to vote either in favour of the resolution or against a resolution, would, to a large extent, help the other members of the Council who are entitled to vote in taking appropriate decision in a larger interest of the Municipal Council. In a democratic set up, while majority holds the field, it cannot be assumed that the majority decisions are taken without considering the pros and cons of expressing want of confidence against the elected President or Vice-President of the Municipal Council and the effect of such decision on the effective functioning of the Municipal Council and the public interest. Therefore, in my view, even though the nominated members have no right to vote while considering the resolution moved for want of confidence against the President or a Vice-President, still they are entitled for the notice of the meeting convened for the said purpose and to be heard while considering want of confidence moved against the President or Vice-President of the Municipal Council. In the instant case, there is no dispute that five persons were nominated by the Government in terms of clause (b) of sub-section (1) of

Section 11 of the Act. However, according to the petitioners, all the said nominated members continue to be the members. It is the case of the respondent that all the five nominated members of the Council have ceased to be the Councilors. In support of this contention, the learned Counsel for the respondent has relied upon Circular An-nexure-R3, dated 15th of October, 1999 issued by the Government. It is useful to refer to the said Circular, which reads as hereunder:

From the said Circular, it is not possible to accept the contention of the respondent that five of the nominated members have tendered their resignation or ceased to be the Councilors. The Circular has only directed the Commissioners of the Municipal Councils to take the resignation of the nominated members. Only the two councillors i.e., M.R. Durgappa and M. Sundara Shetty, it is admitted by the petitioners, have submitted their resignation. There is no material placed before me either to show that three other nominated councillors have tendered their resignation or their nomination has been withdrawn by the Government at any point of time. As noticed by me earlier, Circular Annexure-R3 relied upon by the learned Counsel for the respondent, is of no assistance to the respondent to show that five members have ceased to be the members of the Council. Further, merely because the meeting notice was not issued to the said nominated members by the respondent after the issue of Circular Annexure-R3 will not take away the rights of those members to continue to be the members of the Council. Further, even if it is held that the five nominated councillors have ceased to be the Councilors, still the strength of the councillors would be thirty-three i.e., thirty-one councillors elected as provided u/s 11(1)(a) and one Member of the Parliament and one Member of the Legislative Assembly, who are members of the Council in terms of Section 11(1)(c) of the Act. As noticed by me earlier, in the light of the decision of this Court in the case of S. Shivashankarappa, supra, though one elected member has expired, for the purpose of counting the total number of councillors of the Council, the vacancy that has been caused has to be ignored while determining the total number of Councilors. Under these circumstances, I find it unnecessary to examine the question as to whether the resignation of the two nominated members was required to be accepted; and till it is accepted, whether they continue to be the members of the Council. In the light of the discussion made above, question No. (2) is answered accordingly.

10. The only other question that remains to be considered is whether the impugned resolution dated 24th of March, 2000 passed expressing want of confidence against the petitioners is liable to be quashed. Admittedly, out of twenty-seven members present in the meeting, only twenty-one members have voted in favour of the resolution moved expressing want of confidence against the petitioners. Twenty-one members of the Council do not constitute two-thirds of the total number of members of the Council even if it is held that two out of nominated members of the Council have resigned. Even if the said two nominated members are excluded, the total number of members of the Council

would be 36. Therefore, unless twenty-four members of the Council pass a resolution expressing want of confidence against the petitioners, the petitioners would not vacate their office as President and Vice-President of the Municipal Council in terms of sub-section (9) of Section 42 of the Act. Therefore, the impugned resolution passed expressing want of confidence against the petitioners, is liable to be quashed.

11. In the light of the discussion made above, these petitions are allowed and impugned resolution dated 24th of March, 2000 passed expressing want of confidence against the petitioners is hereby quashed and it is declared that the petitioners 1 and 2 continue to be the President and Vice-President of the City Municipal Council, Chickmagalur.