

(2003) 01 KAR CK 0058
In the Karnataka High Court
Case No : Writ Petition No. 47225 of 2002

Shivamma

APPELLANT

Vs

The Deputy Commissioner and Others

RESPONDENT

Date of Decision : 17-01-2003

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 42, 42 (9), 47, 47 (3)

Citation : (2003) 2 KarLJ 71 : (2003) 1 KCCR 810

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : Shantesh Gureddi, for the Appellant; H.B. Mahesh, High Court Government Pleader for Respondent 1, R.S. Raju, for Respondent 2 and V. Lakshminarayana, for Respondents 3 to 20, for the Respondent

Final Decision : Allowed

Judgement

H.L. Dattu, J.—Sri H.B. Mahesh, learned Government Pleader is directed to take notice for first respondent. He is permitted to file his memo of appearance within six weeks from today.

2. Sri R.S. Raju, learned Counsel takes notice for the second respondent.

3. Sri V. Lakshminarayana, learned Counsel appears for respondents 3 to 20.

4. The matter is listed for preliminary hearing. By consent of the learned Counsels appearing for the parties to the lis, it is taken up for final hearing, since the issues raised in this writ petition lie in a very narrow compass.

5. Petitioner is the President of Town Municipal Council, Sira. She is before this Court primarily calling in question the notice issued by the Chief Executive Officer of the Town Municipal Council, Sira, dated 19-12-2002, on the ground that the said notice is illegal and contrary to the provisions of Section 47(2) and (3) of the Karnataka Municipalities Act, 1964 ("the Act", for short).

6. To appreciate the contentions canvassed by the learned Counsels appearing

for the parties to the lis, the provisions of Sections 42 and 47 of the Act requires to be noticed. They are as under:

Section 42 of the Act speaks of President and Vice-President of a Town Municipal Council. Sub-section (9) of Section 42 of the Act envisages a situation if a resolution expressing no confidence motion is passed by the majority of not less than 2/3rd of the total number of Councillors at a special meeting convened for the purpose against the persons holding the office of President or Vice-President, it is deemed that they have vacated their office. Proviso appended to the sub-section specifies that the resolution contemplated under Sub-section (9) of Section 42 of the Act cannot be moved unless the resolution is signed by not less than 1/3rd of the total number of Councillors and at least 10 days notice is given of the intention to move the resolution of no confidence motion. The other provisions of Section 42 of the Act are not necessary for the purpose of disposal of this writ petition.

7. Chapter III of the Act provides for transaction of business by the Municipal Council. Section 47 of the Act under the said Chapter provides for meeting of the Councillors of the Municipal Council. It says that the Municipal Council shall hold a meeting at least once in every month for transaction of business which is ordinarily called as a general meeting. Sub-section (2) of Section 47 of the Act is relevant for the purpose of this case. Therefore, it is extracted and it reads as under:

"(2) The President may, whenever he thinks fit, and shall, upon the written request of not less than one-third of the whole number of Councillors and for a date not more than fifteen days after the presentation of such request, call a special general meeting".

8. The analysis of the aforesaid section demonstrates that the President of the Town Municipal Council may call for a meeting of the Councillors whenever he thinks fit and desirable. Further, the statute mandates that he shall call for a special meeting whenever a written request is made by not less than one-third of the whole number of Councillors.

9. Sub-section (3) of Section 47 of the Act envisages a situation where the President fails to call for a special meeting as provided in Sub-section (2) of Section 47 of the Act. The Legislature authorises the Vice-President or one-third of the whole number of Councillors to convene such a special meeting on a written request made by not less than one-third of the whole number of Councillors for a day not more than thirty days after the presentation of such a request by requesting the Chief Officer or the Municipal Commissioner to give notice to the Councillors convening the special meeting.

10. Keeping in view the provisions of Sections 42 and 47 of the Act, let me notice the fact situation in the instant case.

11. The Town Municipal Council, Sira, has 23 Councillors. 18 out of them, it

appears, have presented a representation to the Chief Executive Officer of the Town Municipal Council to convene a special meeting to express their no confidence against the President. After receipt of such representation, the Chief Executive Officer, to secure appropriate clarification, by his letter dated 12-12-2002 has requested the Deputy Commissioner of the District to advise him how to proceed in the matter. The Deputy Commissioner, in turn, by Ms letter dated 13-12-2002 has informed the Chief Officer that the provisions of Sections 42 and 47(2) of the Act gives him ample powers to proceed with the matter on the request made by majority of the members of the Town Municipal Council.

12. After receipt of the communication, the Chief Executive Officer by his meeting notice dated 17-12-2002 has called for the meeting of the Councillors of the Town Municipal Council to assemble in the Town Municipal Council on 21-12-2002 at 11.00 a.m. Aggrieved by the said notice issued, petitioner herein has made a representation to the Deputy Commissioner of the District by her letter dated 17-12-2002, informing him that the Chief Officer could not have convened the meeting by giving only 3 days" time to the Councillors to assemble for the purpose of the special meeting. After receipt of the said letter of the petitioner, the Deputy Commissioner, by his letter dated 18-12-2002 has informed the Chief Executive Officer that u/s 42 of the Act, he is expected to give 10 days" clear notice to the Councillors to assemble on a particular day to express their no confidence against the President of the Town Municipal Council. In view of the aforesaid communication, by yet another notice dated 19-12-2002, the Chief Executive Officer of the Town Municipal Council has called for a special meeting of the Councillors on 30-12-2002 for consideration of no confidence motion against the President of the Town Municipal Council. It is the correctness or otherwise of the special meeting notice is the subject-matter of this writ petition.

13. Sri Shantesh Gureddi. learned Counsel appearing for the petitioner, would submit that the special meeting notice issued by the Chief Executive Officer of the Town Municipal Council is contrary to the provisions of Section 47 of the Act. In aid of his submission the learned Counsel relies upon the language employed by the Legislature in subsection (2) of Section 47 of the Act. Therefore, a request is made to set aside the same.

14. Per contra, Sri V. Lakshminarayana, learned Counsel appearing for the contesting private respondents would submit that the meeting notice issued by the Chief Executive Officer is in consonance with the provisions of Section 47 of the Act and therefore, this Court need not take any exception to the said notice.

15. As I have already indicated that Section 47 of the Act provides for meeting of the Councillors of the Municipal Council. The said section only says that the Municipal Council should hold a meeting once in every month for transaction of business. Sub-section (2) of Section 47 of the Act mandates the President of the Town Municipal Council to call for a special meeting on a written request made by 1/3rd of the whole number of Councillors giving 15 days" clear notice after

presentation of the said request. Therefore, request to the President under Sub-section (3) is necessary before Councillors can request the Chief Executive Officer of the Town Municipal Council to convene a special meeting.

16. It is the specific case of the petitioner's learned Counsel before this Court that the majority of the members who intended to pass a no confidence motion against the President, at no point of time, had made any written request for convening a special meeting and therefore, the request made by the majority of the members to the Chief Executive Officer of the Town Municipal Council to convene a special meeting bypassing the provisions of Sub-section (2) of Section 47 of the Act is improper and impermissible and even such a request had been made, the Chief Executive Officer could not have issued the impugned meeting notice.

17. Sri V. Lakshminarayana, learned Counsel appearing for the private respondents is not in a position to inform me whether at any point of time majority of the members of the Town Municipal Council had presented any request to the President to call for a special meeting and in spite of such request the President failed to call for the meeting as requested by the Councillors. In view of this, the assertion made by Sri Shantesh Gureddi, learned. Counsel for petitioner requires to be accepted.

18. A conjoint reading of Sections 42(9) and 47 of the Act would make it clear that if the majority of the members of the Town Municipal Council intend to express their no confidence in the President or Vice-President, they should make a request first to the President of the Town Municipal Council to convene a special meeting. If for any reason, the President fails to call for such meeting, then only the provisions of Sub-section (3) of Section 47 of the Act comes into operation. Alternatively, a request to the President under Sub-section (2) is necessary, before Councillors can call for a meeting under Sub-section (3) of Section 47 of the Act.

19. In the instant case, since at no point of time majority of the members of the Town Municipal Council had made any request to the President to call for a special meeting, on a request made by the majority of the members the Chief Executive Officer of the Town Municipal Council could not have issued the special meeting notice which is impugned in this writ petition. In that view of the matter, the relief sought for by the petitioner in this writ petition requires to be granted by this Court.

20. In the result, the following:

ORDER

I. Writ petition is allowed.

II. The special meeting notice issued by the Chief Executive Officer, dated 19-12-2002 is quashed.

III. Liberty is reserved to the majority of the members of the Town Municipal Council, Sira, to make an appropriate written request to the President of the Town Municipal Council as provided u/s 47(2) of the Karnataka Municipalities Act, 1964, inter alia requesting her to convene a special meeting.

IV. If for any reason, the President of the Town Municipal Council fails to call for the special meeting, then they can proceed as provided u/s 47(3) of the Act. Ordered accordingly.

V. All the other contentions of both the parties are left open. No order as to costs. Ordered accordingly.