

(2012) 12 KAR CK 0011

In the Karnataka High Court

Case No : Writ Petition No's. 48691-48693 of 2012 (LB-RES)

Smt. Devika Siddalingagowda, Sri. Sateesh Kumar and Sri.
N. Manjunath

APPELLANT

Vs

The Commissioner City Municipal Council Tumkur District,
Tumkur-572101 and Others

RESPONDENT

Date of Decision : 20-12-2012

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 42 (9), 47 (2), 47 (3)

Citation : (2012) 12 KAR CK 0011

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : Ravivarma Kumar for M/s. A. Nagarajappa and Associates, for the Appellant; Annapurna Hebbar, for M/s. Indus Law for R1 and Sri Jayakumar S. Patil for Sri Abhinay P. Patil, for R2-11, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Bopanna

1. The first petitioner is the President and the petitioners No. 2 and 3 are the Members of the City Municipal Council, Tumkur. They are before this Court claiming to be aggrieved by the notice dated 26.11.2012 (Annexure-"O") issued by the first respondent convening a meeting on 07.12.2012 to consider the "No Confidence Motion" moved against the first petitioner. The respondents No. 2 to 11 being the other members of the said Municipal Council have sought impleadment and have been impleaded as respondents No. 2 to 11. The first petitioner was elected in the general elections to represent Ward No. 28 which was reserved for "Women" and was thereafter elected as the President on 17.03.2012. The office of the President had fallen vacant at an earlier instance since the then President Smt. Yashodamma was removed by a "No confidence Motion" on 27.01.2012. The strength of the Municipal Council is 38 members. Among the said members, 25 of them have signed the "No Confidence Motion"

against the first petitioner herein. The first petitioner however contends that such "No Confidence Motion" notice stated to have been moved by the said persons had not been presented to the first petitioner and as such, the "No Confidence Motion" as contemplated u/s 42(9) of the Karnataka Municipalities Act, 1964 ("Act" for Short) has not been presented in the manner as contemplated u/s 47 (2) of the Act and the present meeting which has been convened is not as provided u/s 47(3) of the Act. It is therefore contended that the meeting convened is not in accordance with law and as such, the notice is liable to be quashed.

2. The respondents No. 2 to 11 have filed their objection statement disputing the case put forth by the petitioners. It is their case that the "No Confidence motion" Notice dated 08.11.2012 was presented to the first petitioner through the Office of City Municipal Council by delivering it at the Tappal Branch as the President was not available. It is also their case that it has not only been sent from the Office of City Municipal Council by "Muddam" to the petitioner's house on 09.11.2012 and thereafter but has also been dispatched by Registered Post Acknowledgement Due and notice sent by both modes have returned un-served. That apart, the respondents No. 2 to 11 on their own have also dispatched the notice for moving the "No Confidence Motion" by registered Post to the Office address as well as to the two alternate residential address of the first petitioner but the same has been returned by the Postal Authorities as the first petitioner was not available as per the endorsement. In such circumstance, it is contended that the presentation to the President as contemplated in law has been made but since the first petitioner did not choose to call the meeting, a requisition was made to the Vice-President who has directed the first respondent to call the meeting which is in accordance with law.

3. In addition to the above, the first respondent has also filed an affidavit. The sequence under which the notice had been received in the Municipal Office and the attempt that has been made to serve the same to the first petitioner and the same could not be done as she was not available is explained. It is further indicated that the first respondent accordingly placed a copy of the notice before the President with a file noting on 15.11.2012 which was ultimately seen by the first petitioner on 19.11.2012 and an order declining the request for the meeting was made by the first petitioner on 21.11.2012. Thereafter since there was a direction by the Vice President, the notice had been issued and in that context, it is stated that the same is in accordance with law.

4. In the light of the rival contentions, I have heard Sri Ravi Varma Kumar, learned senior counsel on behalf of Sri A. Nagarajappa, learned counsel for the petitioners, Sri Jayakumar S. Patil, learned senior counsel on behalf of Sri Abhay P. Patil for respondents No. 2 to 11 and Ms. Annapurna Hebbar for M/s Indus Law on behalf of first respondent and perused the petition papers. The file secured from the City Municipal Council was also perused and returned during the course of proceedings on the earlier date of hearing.

5. Sri Ravi Varma Kumar, learned senior counsel would at the outset refer to the provision contained in Section 42(9) and 47(2) and (3) of the Act since the primary contention of the learned senior counsel is that the notice was not presented to the President as contemplated and that the Commissioner has acted without authority though there is no dispute that more than one third members have signed the same. Hence, it is necessary to notice the said provisions for better appreciation, which is as hereunder:

Section 42 -President and Vice President-

(1) x x x

(2) x x x

(3) x x x

(4) x x x

(5) x x x

(6) x x x

(7) x x x

(8) x x x

(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 negated 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.

Section 47 -Meeting: (1) The municipal council shall ordinarily hold at least one meeting in every month for the transaction of business [which shall be called ordinary general meeting].

(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 councilors and for a date not more than fifteen days after the presentation of such request, call a

special general meeting.

(3) If the President fails to call a special general meetings as provided in sub-section (2), the Vice-President or one-third of the whole number of councilors may call such meeting for a day more than thirty days after the presentation of such request and require the Chief Officer or the Municipal Commissioner to give notice to the councilors and take such action as may be necessary to convene the meeting.

6. Having referred to the said provisions, the learned senior counsel for the petitioners has cited the decisions of this Court in the case of Smt. Sivamma -vs. Deputy Commissioner, Tumkur District and Others (ILR 2003 KAR 598) with specific reference to the relevant paragraphs which are as hereunder:

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 1/3 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 by-passing 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. x x x

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 Subsection (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.

7. The learned senior counsel for the petitioners also cited the decision in the case of M. Krishnappa and another vs Chief Officer, TMC., Vijayapura and Others-

(1993 (1) K.L.J. 583) with specific reference as under:

18. The above Rule also indicates that the Municipal Commissioner or the Chief Officer, as the case may be, shall send the Meeting notice to the Councillors indicating the date, time and place of the Meeting as decided by the President. Similarly in terms of Section 47(3) of the Act the Municipal Commissioner or the Chief Officer has to issue Meeting notices in accordance with the decision of either of the Vice-President or one-third of the whole number of the Municipal Councillors regarding date, time and place of a Meeting of the Municipal Council, but the Chief Officer cannot on his own take a decision to call a Meeting, which he is not authorised to do in law, as the contents of Section 47(1)(2) and (3) of the Act are very clear as to which authorities who could call for the Meeting of a Municipal Council.

19. In the case on hand, written request to call for the Meeting was neither addressed to the President nor a copy of it was sent/delivered to him. The Chief Officer did not seek the orders of President in regard to calling of a Meeting. The Meeting was not called by the President or Vice-president or one-third of the whole number of Councillors in terms of Section 47(2) and (3) of the Act. The Chief Officer in law had no authority to call a Meeting. He could only convene a Meeting as per the decision of one of the authorities mentioned in Section 47 of the Act on a given date, time and place and make necessary arrangements for the Meeting. The question of failure on the part of the President or Vice-president calling a Meeting in terms of Section 47(2) and (3) arises when a written request is made to the President. Section 47(2) clearly states that 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, for a day not more than 15 days after the presentation of such request, call a special general meeting. Upon the presentation of written request by the required number of Councillors, the President is bound to call a special general meeting. This has clear indication that such a written request has to be presented to the President so as to bind him to call such a meeting. Section 47(3) becomes operative only on the failure of the President calling a special general meeting in terms of Section 47(2).

8. The decision of the Division Bench of this Court in Hussainappa Jagali Vs. The Deputy Commissioner and Others is cited by the learned senior counsel for the petitioners with reference as hereunder:

11. In the present case, admittedly the first date of notice is 23.11.2009 but the appellant has not called for the meeting and he had sent letter to the Deputy Commissioner, Raichur and others informing that there is some anomalies with the signatures of 16 members out of the 18 Councillors in the so called request to move "No Confidence Motion". The time to convene the meeting as per sub-section (2) of Section 47 of the Act was till 08.12.2009. Now the 2nd respondent calls for a meeting by notice dated 5.12.2009 fixing the date of meeting as 14.12.2009 and the said meeting did not transact any business as there was commotion. According to the appellant, the meeting called by the CEO by notice

dated 5.12.2009 is without jurisdiction. Sub-section (2) of Section 47 of the Act contemplates that such exercise of jurisdiction could be by the President alone.

12. If no meeting is called for on or before 8.12.2009, the exercise of authority as contemplated under Sub--section [3] of Sections 47 of the Act comes onto play i.e., either the Vice President or 1/3rd of the whole number of Councillors may call for such meeting to move "No Confidence Motion" and such request has to be made within 30 days from the date of original request i.e., 23.11.2009 to the Chief Officer of the Municipal Commissioner to give notice to the Councillors and take such action as may be necessary to convene a meeting. Sub--Section (4) of Section 47 of the Act says any meeting may be adjourned until the next-date or any subsequent date.

9. With reference to the above cited decisions, the learned senior counsel for the petitioners would contend that what has been emphasized by this Court is that the presentation of the notice can only be made to the President who shall alone call the meeting to consider the same. In that context, in the instant case, the document at Annexure-B would disclose that it was not addressed to the President, but to the Commissioner by striking the name of the President is his contention. It is further contended that even from the affidavit filed by the first respondent as also the objection statement filed by respondents No. 2 to 11 it is self declaratory that it has been delivered in the office of the Municipal Council. Hence, it is not presented to the President as contemplated u/s 47(2) of the Act and therefore, the said notice could not have been acted upon. Further, even the conduct of the first respondent in resorting to dispatch the same by "Muddam" to the President through a Group "D" Employee is not contemplated and any such attempt cannot be construed as an attempt to present the "No confidence motion" notice to the President by the members who had issued such notice. Even otherwise, the first petitioner was present in the office on 8th and 9th of November 2012, she had disposed of certain applications which are produced at Annexures-P1 and P2 and there was no impediment to present to the President. In that context, the meeting itself could not have been convened and the question of the members requesting the Vice President on 24.11.2012 would not arise at all. On the other hand, the request made to the Vice President on 24.11.2012 (Annexure-N) is an independent request which is not contemplated in law and as such, the impugned notice which has been issued on 26.11.2012 without reference to the presentation of the notice of motion to the President is not sustainable.

10. Sri Jayakumar S. Patil, learned senior counsel appearing for the contesting respondents would however on the other hand place reliance on the decision of this Court in the case of Revanna Siddappa vs Deputy Commissioner, Bijapur and others (1979(2) K.L.J. 81) wherein it is held as follows:

9. Lastly, the learned counsel for the petitioner submitted that the first requirement of proviso to sub-section (9) of Section 42 was not complied with as the requisition signed by 29 councillors was not presented to him personally. He,

however, agreed that it was handed over in the office of the Municipal Council and through tappal, it reached him on 06.10.1978. All that sub-section (9) of Section 42 requires is that a requisition to call a meeting expressing want of confidence in the President or vice-President should be given to President or vice-President should be ten days before moving the resolution. There is no particular procedure prescribed as to how the said requisition should reach the President or vice-President. It may be given either in person or handed over in the office as has been done in the present case. Statutory requirement stands complied with if the requisition had been received by the President or vice-President, as the case may be, ten days before the date on which the resolution is sought to be moved in the meeting of the municipal council. In the present case, the resolution was moved on 27.10.1978 and the requisition had reached the President on 06.10.1978. Therefore, there is no substance in this contention also.

11. By relying upon the cited decision, the learned senior counsel for the respondents would thereafter refer to the provisions which have been noticed above and would contend that there is no requirement in law that the members who have signed the "No Confidence Motion" notice should personally serve it on the President. At best, the requirement under the provision is that there should be presentation to the President and it could be even made through the Office of the City Municipal Council and it is only to be brought to the notice of the President which would satisfy the requirement of Section 47(2) of the Act. As otherwise, if the President does not choose to receive as in the present case, the same would defeat the provisions of law. The learned senior counsel would refer to the returned envelopes and the "Muddam" register to point out the efforts made to serve the notice of "No Confidence Motion" which was addressed to the President. Therefore, keeping in view the factual situation herein the notice served would have to be considered as having been presented to the petitioner and the same not having been acted upon by the President, a subsequent notice has been given to the Vice President on 24.11.2012 with reference to the notice dated 08.11.2012 presented to the President who has thereafter directed the Commissioner to call for the meeting and the same is therefore justified is the contention.

12. Having considered these aspects of the matter and having noticed the decisions cited by the learned senior counsel for the parties, it is seen that in the decisions referred to by the learned senior counsel for the petitioners, the situation was where the members had in fact addressed the "No Confidence Motion" Notice to the Chief Executive Officer who on his own had called the meeting, more particularly in the decision in the case of Smt. Sivamma (ILR 2003 KAR 598), the Chief Executive Officer had taken the opinion of the Deputy Commissioner and had thereafter called the meeting. Hence, the consideration therein was not in a circumstance where the presentation was made by addressing the "No Confidence Motion" to the President, but representation was presented to the Chief Executive Officer and thereafter the meeting had been convened by the Chief Executive Officer who had not even placed a copy of it

also before the President. In the case of M. Krishnappa Vs. Chief Officer, , the members presented it to the Deputy Commissioner requesting to convene the meeting, based on which the Chief Executive Officer convened the meeting. Therefore, this Court had arrived at such conclusion keeping in perspective the fact situation.

13. However, per contra, in the case of Revanna Siddappa [1979 (2) KLJ 81] relied upon by the learned senior counsel for the respondents, the very situation in the manner in which it is required to be presented to the President has been considered and this Court has held that the delivery of the "No Confidence Motion" notice in person or in the office and thereafter sent to the President, is sufficient presentation and it need not be done personally to the President himself or herself. In that regard, the decision of the Division Bench in the case of Hussainappa Jagali Vs. The Deputy Commissioner and Others cited by the learned senior counsel for the petitioners wherein it was contended that exercise of jurisdiction could be by the President alone, would also not be of assistance since the same was not in a circumstance which we are concerned in the instant case. That was a situation where the second meeting was convened by the Chief Executive Officer on his own, after the first meeting convened for the purpose did not transact any business as there was commotion.

14. Thus, I am of the considered opinion that the requirement of presentation to the President as envisaged in Section 47(2) of the Act does not mean that more than one third members should personally thrust the motion notice in the hands of the President to constitute effective presentation. Even in such case, what if the President receives it, but does not acknowledge, and later denies having received it at all and approaches this Court, which is a possibility keeping in view the falling standards in public life where thirst for enjoying power is more important than self-esteem. In fact all the safeguards which would enable the President or Vice President, who enjoys the confidence of the elected members to continue is provided in Section 42(9) of the Act. Therefore, the requirement is only that it should be addressed to the President, and it should be presented by delivering through an acceptable and normal mode with the intention of reaching it to the President which includes delivering it in the Office of the Municipal Council and if need be, by dispatching it through Registered Post Acknowledgment Due. If such procedure has been followed, the act of presentation would be complete and if the receipt of the same is evaded by the President, it would not mean that there was no presentation as contemplated.

15. Therefore, keeping in view the above position of law and the factual matrix herein, it is necessary to find out the manner in which the "No Confidence Motion" Notice was attempted to be served on the President, rather the manner in which presentation has been made requires to be noticed. In that regard, though the learned senior counsel for the petitioner relied upon the copy of the notice which is produced as Annexure-B to the petition to contend that the name of the President has been struck off and therefore, the presentation was made to

the Commissioner, the documents disclose that it is otherwise. The file summoned from the first respondent and perused by me would disclose that the records contained an unopened envelope by which the Commissioner had forwarded to the President the notice received, under Registered Post Acknowledgment Due, but, the same had returned unserved. The sealed envelope was opened in the Court and contents therein was noticed, which indicated that it had been addressed to the President though delivered in the office of the Municipal Council. Further, on receipt of the notice, the Commissioner has dispatched the same to the President even by "Muddam". The learned senior counsel for the petitioners took strong objection to the manner in which the same had been dispatched by the Commissioner to the President through a "D" Group employee, but in my opinion, the same does not affect the manner in which the attempt was made to present the "No Confidence Motion" to the President which is also an acceptable mode to ensure service. Even assuming for a moment that the first petitioner's contention that she was available in the Office of the Municipal Council on 8th and 9th of November 2012 is true as she has sought to rely upon the documents at Annexures-P1 and P2 in that regard, the same would not change the complexion when the fact that the said "No Confidence Motion" notice had been delivered in the office of the Municipal Council, has been established. Such contention would lose its credibility in a situation and in a circumstance when not only the "No Confidence Motion" dispatched to the petitioner from the Municipal Council Office had been returned unserved, but when the "No Confidence Motion" notice sent by the respondents themselves to the first petitioner as demonstrated from Annexures-R3(a) to R3(c) were also returned unserved both from the Office and residential address. This would disclose that the presentation of the "No Confidence Motion" as required u/s 47(2) has been complied with. If the first petitioner has managed to evade receipt of the same, she cannot be heard to complain that the same was not presented to her.

16. Apart from the above aspect, what is also to be noticed is that in addition to dispatching the same in the said manner, the Commissioner did not unilaterally proceed to convene the meeting but in fact has through an Office note placed the copy of the "No Confidence Motion" which had been delivered in the Municipal Office before the first petitioner on 15.11.2012. The first petitioner-President has made office notice in the Note sheet even as per the document produced at Annexure-C by the petitioners themselves. Therefore, even though not on 08.11.2012 the first petitioner had the benefit of looking into the "No Confidence Motion" notice, on 19.11.2012 and by a note made by the first petitioner, the request for summoning the meeting had been rejected on 21.11.2012. Therefore, if these aspects of the matter are kept in view, the fact that the "No Confidence Motion" notice was presented to the first petitioner cannot be disputed at all.

17. Hence, keeping the above aspects in view, the next question which would arise for consideration is as to whether the meeting which has been convened on

07.12.2012 is within the period of thirty days after presentation as contemplated u/s 47(3) of the Act. Since I have already arrived at the conclusion that the presentation of the notice has been made in accordance with law, the meeting was to be held within 30 days from 08.11.2012. Even if the contention of the first petitioner is accepted that it had not been served on 08.11.2012, but keeping in view the manner of service as made, the first petitioner in any event had notice of the motion as presented to her on 15.11.2012 when the note was put up and was acted upon by her on 19.11.2012 and when she had ultimately rejected the request on 21.11.2012, the cause for the members to approach the Vice President to seek for convening of the meeting had arisen. The period of fifteen days stated in Section 47(2) of the Act is the time allowed to the President to convene the meeting. Therefore, until lapse of fifteen days, the situation contemplated in Section 47(3) of the Act would not arise if the President does not act one way or the other. But if the President rejects the request before fifteen days, the intention of not convening the meeting is made known and the procedure contemplated in Section 47(3) of the Act can be followed thereafter.

18. In that context, even if from the said date of knowledge of notice, the date of the meeting is taken, it is well within thirty days from the said period. The rejection by the President is on 21.11.2012 and request to the Vice President is on 24.11.2012 which is also with reference to the notice dated 08.11.2012 and as such, is not an independent request as contended. Further, if the first date of presentation of the "No Confidence Motion" notice is taken into consideration, the same would be on 08.11.2012. Thus from the said date, if the time gap is calculated, the period of initial 15 days would expire on 23.11.2012. Hence, the request made to the Vice President on 24.11.2012 would remain valid even in that circumstance. Thus, even if the period of thirty days as contemplated u/s 47(3) of the Act is calculated from 08.11.2012 by excluding the said date, the meeting convened on 07.12.2012 would be on the 29th day and therefore, within the time as stipulated therein. Thus, even with regard to the period prescribed, the compliance is in accordance with law and on that aspect also, the decision of the Division Bench of this Court in the case of Hussainappa Jagali relied upon by the learned senior counsel would not be of assistance since in the said case, as already noticed, the situation was where a meeting had been called and the meeting was adjourned without transacting the business and the subsequent meeting called was beyond time.

19. Therefore, keeping all these aspects in perspective, insofar as the compliance relating to the presentation of the "No Confidence Motion", the same being in accordance with the law and the meeting also being convened in the manner and within the time as prescribed, there is due compliance of the requirement under Sections 47(2) and (3) of the Act. The petitioners therefore cannot have any grievance whatsoever. The question that would also require consideration in the light of what had been contended by the learned senior counsel is as to whether the first respondent Commissioner was justified in the manner in which he has

acted both with regard to the method in which the notice has been dispatched and the way in which he has conducted the proceedings of "No Confidence". On the first aspect of the matter, I am of the opinion that the notice of "No Confidence Motion" had been submitted in the Office of the President and the Commissioner who is incharge of the affairs was required to place it before the President and he has made all attempts to have the same placed before the President which was a duty cast upon him. Therefore, he has not committed any error in that regard. Insofar as the manner in which the meeting has been conducted, I am of the opinion that the same would not arise for consideration in the instant petition. What had been indicated by this Court was to proceed with the meeting and not to give effect to the resolution and it is in that circumstance, a direction had been issued to keep the resolution in a sealed cover, so that the implementation could be postponed so as to decide the merits and thereafter to find out as to whether it needs implementation. On giving effect to the resolution, if the same is against the petitioners and if they have any grievance with regard to the procedure followed, it can only be assailed in an appropriate proceedings and as such, no opinion is expressed in that regard.

In the result, the writ petitions are dismissed. The interim directions shall stand dissolved. Parties to bear their own costs.