

(2013) 01 KAR CK 0064

In the Karnataka High Court

Case No : Writ Appeal No"s. 8819 to 8821 of 2012

Smt. Devika Siddalingagowda, Sri Sateeshkumar and Sri N.
Manjunath

APPELLANT

Vs

The Commissioner City Municipal Council and Others

RESPONDENT

Date of Decision : 02-01-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Municipalities Act, 1964 — Section 42(9)
Representation of the Peoples Act, 1951 — Section 81

Citation : (2013) 2 AKR 461 : (2013) ILR (Kar) 1342 : (2013) 4 KarLJ 635 :
(2013) 2 KCCR 1089

Hon'ble Judges : N. Kumar, J;B. Sreenivase Gowda, J

Bench : Division Bench

Advocate : Ravivarma Kumar for A. Nagarajappa and Associates, for the
Appellant; Jayakumar S. Patil for Sri Devi Prasad Shetty, for C/R 2 CP No.
801/2012, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—These appeals are preferred challenging the order passed by the learned Single Judge who has declined to interfere with the notice issued by the Commissioner, Tumkur Sub-Division, Tumkur District convening a meeting of Municipal Council to consider the no confidence motion on 07.12.2012. The learned Single Judge in the impugned order has stated the facts elaborately and therefore it is not necessary for us to restate the said facts. From the material available on record it is clear that the first petitioner Smt. Devika Siddalingegowda, wife of Ramesh Gowda was elected as President of City Municipal Council, Tumkur District, Tumkur on 17.03.2012. Petitioners 2 and 3 are members of the said Municipal Council. 25 members out of 38 members of the Council made a request in writing on 08.11.2012 which is addressed to the first petitioner requesting her to convene a Special General Meeting of the Council for considering their request for moving a non confidence motion against

her u/s 42(9) of the Karnataka Municipalities Act, 1964 (for short hereinafter referred as "the Act"). It is not in dispute between the parties that the said request in writing was not presented to the first petitioner personally. On the contrary as is clear from the statement of objections filed in the writ petition the said request dated 08.11.2012 was made to the first petitioner at 10.54 a.m. in the CMC Office at Tappal Brach which was duly acknowledged by the Officials. A copy of the said written request was also given to the Commissioner of the Municipal Council. The material on record shows that on receipt of the said written request the same was taken to the first petitioner's residence in person by one N. Nagaraj, a D" Group employee at about 6.15 p.m. on 09.11.2012 and the uncle of the President informed him that she is not at home and he does not know the time of her arrival. Again on 10.11.2012 an attempt was made to serve the said written request on her at 3.20 p.m. This time her sister informed the said Nagaraj that the President is not at home. Again on 13.11.2012 one another attempt was made to serve the said written request on the first petitioner at 3.15 p.m. This time a maid servant informed the said Nagaraj that the President has gone to Madhugiri. In the meanwhile a copy of the said written request was sent to the first petitioner to her office and two residential addresses through RPAD. In the notice sent to her office address the concerned postman made an endorsement that she was absent consecutively from 09.11.2012 to 19.11.2012. When the officials of the Council were unable to serve the said written request on the President, on 15.11.2012 they sent a copy of the said written request by RPAD to the first petitioner which also was returned on 23.11.2012 with an endorsement not available. However, in the meanwhile the office had put up the said written request to the President for consideration on 19.11.2012 along with others matter in a file. On 21.12.2012 as per Annexure H she refused to call for a meeting on the ground that the said request was not handed over to her personally and the signature of the members found therein are doubtful and the Council is busy with the ensuing election in demarcating the reserved constituency. In this back ground on 24.11.2012 the aforesaid 25 members made a request to the Vice-President u/s 47(3) of the Act who in turn directed the Commissioner to convene a meeting. It is that notice which is challenged in the writ petition.

2. The learned Single Judge after considering the case pleaded by both the parties and after looking into all the documents produced by them and after carefully considering the decisions relied upon by both the parties and interpreting the statutory provisions, has held there is no requirement in law to present the request personally to the President requesting her to convene a special general meeting to consider the request for moving no confidence motion. He has further held that in the instant case, the President has avoided to convene the meeting and therefore in law the request was made to the Vice President u/s 47(3) of the Act is valid and legal and no case for interference is made out, accordingly he has dismissed the writ petitions. Aggrieved by the said order the present appeals are filed.

3. Professor Ravivarma Kumar, learned Senior Counsel appearing for the appellants contended that having regard to the language employed in Section 47 (2) read with Section 42(9) of the Act the request for convening a special general meeting should be presented to the President personally. If the request is presented to the office of the President or sent it by RPAD or by any other means would not satisfy the legal requirements as per the proviso to Section 47(2) of the Act. In support of his contention he relied upon three decisions of this Court as well as the Apex Court and contended that in the light of the aforesaid decisions and the statutory provisions the impugned notice is illegal and liable to be quashed.

4. Per contra, Sri Jayakumar S. Patil, learned Senior Counsel appearing for the 2nd respondent/caveator contended that having regard to the language employed in Sub-Section (2) of Section 47 of the Act, presentation of a written request to the President personally is not the requirement of law. The written request addressed to the President may be handed over to the President either by post or through the office which would satisfy the requirement of law. In the instant case such request was sent to the President and she has declined to convene the special general meeting and therefore by virtue of sub-section (3) of Section 47 the Vice President exercised his power to convene a meeting and accordingly he directed the Commissioner to convene a meeting and notice of meeting so convened is legal and valid as has been held by the learned Single Judge and no case is made out for interference.

5. In the light of the aforesaid facts and rival contentions of the parties, the point that arises for our consideration is:

Whether sub-section (2) of Section 47 of the Act mandates that the written request to convene a special general meeting addressed to the President should be handed over to the President personally?

In order to answer the aforesaid question two provisions have to be considered namely Sub-Section (9) of Section 42 and Section 47 of the Act.

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

Xxx xxx xxxx

(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.

6. Section 47 deals with meeting to be convened for transacting the business of the municipal council which reads as under:

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.

7. A reading of the aforesaid provisions makes it clear that when once election is conducted to the office of the President or Vice President they shall hold the office for the tenure to which they are elected. If a resolution expressing want of confidence in him or her is passed by a majority of the total number of Councilors 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 he/she ceased to hold such office. In other words, they enjoy such office as long as the members of the Council reposed confidence in him/her. Proviso to the said provision stipulates that such resolution shall be moved by signing not less than one-third of the total number of Councillors having voting right and at least ten days notice before moving the resolution. These requirements are mandatory. It is only when these two requirements are complied with, then a special general meeting has to be convened for the purpose of considering such resolution. Section 47 deals with meeting of the Council. Sub-section (2) provides 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. However, such written request has to be made to the President and after receipt of such request he/she is under an obligation to call for a meeting within fifteen days from the presentation of such request. The said request has to be signed by not less than one third of whole

members of the Council. If the aforesaid requirements are complied with and the President fails to perform his statutory duty of calling special general meeting then sub-section (3) confers power to consider such request on the Vice President or one-third of the whole number of Councilors to 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. These provisions had been subject matter for consideration in several judgments of this Court.

In the case of *M. Krishnappa and another vs. Chief Officer, TMC., Vijayapura and Others* (1993 (1) K.L.J. 583) interpreting Section 47(2) and (3) of the Act this Court has held under:

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).

Again this Court in the case of *Smt. Sivamma vs. Deputy Commissioner, Tumkur District and Others* (ILR 2003 KAR 598) interpreting Section 42(9) of the Act has held as under:

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 of the Chief Executive Officer of the 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.

The Division Bench of this Court in the case of Hussainappa Jagali Vs. The Deputy Commissioner and Others has held 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.

This Court in the case of Revanna Siddappa vs. Deputy Commissioner, Bijapur and others (1979 (2) K.L.J. 81) has held as under:

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.

Reliance is also placed on the judgment of the Apex Court in the case of G.V. Sreerama Reddy and Another Vs. Returning Officer and Others, interpreting Section 81 of the Representation of the People Act, 1951, the Supreme Court held that an election petition has been presented by the Advocate of the

petitioner who was an unsuccessful candidate in the election. The question was whether the election petition was duly presented having regard to the language employed in Section 81 which deals with presentation of petition by any candidate of such election or any elector to the High Court. Presentation by agent i.e. an Advocate does not constitute valid presentation.

In the case of M. Krishnappa referred to supra there was no request made to the President to convene special general meeting either by person or through any method to consider the no confidence motion. In the absence of such request and before exhausting application of Section 47(2), the Commissioner himself had called the meeting by virtue of the power conferred on him under sub-section (3) of Section 47 and in that circumstance this Court has quashed the impugned notice therein. Therefore the said judgment is of no assistance in deciding the issue on hand. In the decision of the Division Bench of this Court in Hussainappa Jagali's case a request was made to the President to call for a meeting. He in turn called upon the Chief Officer to clarify certain doubts. Instead of clarifying the doubts the Chief Officer exercised his power under Sub-section (3) of Section 47 which was found fault with. Therefore the said judgment also is of no assistance. However, in the case of Revanna Siddappa while interpreting Sub-section (9) of Section 42 it was held that a written request to call for a meeting to move no confidence motion should be given to the President or Vice President as the case may be. There is no particular procedure prescribed as to how the said request should reach the President or Vice President. It should be given either personally or handed over in the municipal office. It is true that Section 47 has not been considered in the said judgment. Last judgment on which reliance is placed is in the case of Babu Verghese and Others Vs. Bar Council of Kerala and Others, wherein the Apex Court has reiterated the often quoted principles of law namely that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. Therefore in order to find out whether the particular act has been complied with or is valid and legal what is to be seen is the provision of law. The word used therein and find out whether the power conferred under the statute has been exercised in the manner prescribed under the said provision.

8. In this back ground when we look at Section 47, this provision confers power on the President, Vice President or 1/3rd of the whole number of councilors to call a special general meeting. The requirement of law as stipulated in Section 47(2) is that, if a request is made by not less than one-third of the whole number of councilors who have voting right, the President shall call a special general meeting. In other words, such a request cannot be made to any other person other than the President. The request has to be made to the President, so that he will come to know the intention behind such request and convene such special general meeting. It is nothing but a communication of the intention on the part of the members of the Council to their leader-the President. Such a request has to be necessarily in writing by not less than one third of the whole members of the Council. This is a mandatory requirement of law. The

presentation of the request to the President does not mean that such request has to be made to the President personally. The Legislature has consciously not used the word "personally". The reason is not far to seek. If one third of the council members want to move a no confidence motion against the President himself and the requirement is, it is to be presented to him personally, the President may avoid to receive such request personally and thus frustrate a valuable right of the members. Therefore such a requirement is not prescribed. The absence of the word "personally" is conspicuously absent in the said provision. The intention of the Legislature is clear. In fact the language employed in this provision does not indicate that such a written request is to be presented to the President personally. The Legislature in its wisdom has cautiously avoided the word "personally" while enacting the Law/Act. Therefore, the presentation of the written request, though to be addressed to the President, need not be presented to the President personally. It is not the requirement of law. On the contrary, such request has to be made to the President and presented to him, may be either personally or by sending it by post or by handing over such request in his office. When once such request is presented, then Section 47(2) comes into operation and casts an obligation on the President to convene a special general meeting. Any other interpretation would make Section 47 (2) redundant.

9. This is a classic case where majority of the members who have lost confidence in the President passed a resolution to remove the President which resulted the President to rush to the Court seeking an interim order of stay of the proceedings. When Parliament made an attempt to decentralize the power and in particular to grass route level i.e., Panchayat and elections are conducted periodically and power is sought to be transferred to those persons who have been elected to the posts, the person after occupying such post seems to think that when once he/she is elected to the said post, he or she cannot be removed from the said post before the completion of the term. There is no specific qualification for contesting the post of President. They are selected by majority of the members who have voting right in the Council. If the majority of member have lost confidence in him/her, he/she cannot continue to hold such post for a moment and if such a person is permitted to continue to hold such post by any interim order of the Court, after losing confidence of majority of the members it amounts to negation of democracy and the purpose of decentralization of power itself would be defeated. In such cases, the court should be slow while exercising its discretionary power of granting interim order.

10. In the instant case President was elected on 17.03.2012, she lost confidence of 25 members out of 38 members after eight months. They made a written request to the President on 8.11.2012 to convene a special general meeting to consider their request to move no confidence motions against her. If she is a true leader, she should have received the request and convened a meeting and showed majority of the members are with her. Admittedly instead of doing so, she avoided receiving the written request and lastly rejected the request saying that the written request was not presented to her personally. As stated above

postal endorsement shows the President was not available in the Municipal Office consecutively for 10 days from 9.11.2012 to 19.11.2012 nor in her two residences in spite of the attempt by the office to serve her personally on 9th, 10th and 13th of November, 2012. In view of this peculiar circumstance, the Commissioner has no other way but to issue notice, Annexure H to convene a special general meeting to consider the written request to convene a meeting for moving no confidence motion as directed by the Vice President of the Municipal Council. As stated supra when majority of members, who have elected the President, have lost confidence in the President, she cannot stick on to the said post. The fact remains the President of the Council who is expected to discharge her statutory function to the public at large and to supervise the working of the organization could not be traced by her own officials for 10 days as well as Councilors from 9.11.2012 to 19.11.012. By such acts she forfeits her right to continue in the office and at any rate such a conduct disentitles her to any relief at the hands of this Court under Article 226 of the Constitution. She is ill advised.

11. The learned Single Judge after considering entire available material on record, provisions of law and various judgments of this Court as well as Apex Court has held the general meeting convened u/s 47(3) of the Act and the notice issued at Annexure H is legal and valid and the same do not call for interference. Therefore, we do not see any merit in the appeals. Accordingly the appeals are dismissed. The parties are directed to bear their own costs.