

(2007) 01 KAR CK 0010
In the Karnataka High Court
Case No : Writ Appeal No. 88 of 2007

Smt. Laxmavva Padasalagi

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 23-01-2007

Acts Referred:

Karnataka Panchayat Raj (Motion of no-confidence against Adhyaksha and Upadhyaksha of Grama Panchayat) Rules, 1994 — Rule 3, 3 (1)

Citation : (2007) ILR (Kar) 1028 : (2007) 2 KarLJ 45 : (2007) 2 KCCR 1489

Hon'ble Judges : V. Jagannathan, J; S.R. Bannurmath, J

Bench : Division Bench

Advocate : G.S. Kunnur, for the Appellant; V. Vidya, Government Advocate for R.1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

1. Though the matter is posted for orders, since the contesting respondents 1 and 2-Government, are served and as the matter can be disposed of on a short question, with the consent of counsel on both sides, matter is taken for final disposal.

2. The appellant-writ petitioner before the learned Single Judge, is the President of Bolchikkalaki Gram Panchayath in Bijapur District. She has approached this Court challenging the notice dated 1.12.2006 for considering the "no-confidence motion", proposed by other members. The learned Single Judge being unable to find any legal infirmity in the notice held that, the Writ Petition is devoid of merits and dismissed the same. Hence, the present Appeal.

3. Sri. G.S. Kannur, learned Counsel appearing for the appellant, relying upon the provisions of Rule 3(1) of the Karnataka Panchayat Raj (Motion of no-confidence against Adhyaksha and Upadhyaksha of Gram Panchayat) Rules, 1994, (for short "the Rules") contended that, as the written notice of intention to make the motion is not in Form-I and since it does not accompany the proposed motion, there is violation of mandatory requirement of provisions of the Act and Rules. In

this regard, the learned Counsel has relied upon the decision of learned Single Judge of this Court in the case of Mallamma Vs. State of Karnataka and Others,

4. We have perused Rule 3(1) read with Section 49 of the Act and the decision of the learned Single Judge in Mallamma's case as well as the records. No doubt the learned, Single Judge while considering Mallamrma's case has held that, as requirement of Rule 3(1) is mandatory in nature, since the notice of "no-confidence motion" should be in Form -I and should accompany a copy of the proposed motion and if there is any violation of the requirements, the notice is bad in law.

5. At the outset, it is to be noted that the object of introduction of Karnataka Panchayat Raj Act was, decentralization of the administrative system by introducing Panchayat Raj institutions in the State of Karnataka for the effective rendering service to the public by the local self-Government and as such at village level- Gram Panchayat and Taluk level -Panchayats, are established. These self-Government Units work and governed under the Act. The members are elected by the people to represent them in Panchayat and the members in turn, elect amongst themselves leaders called Adhyaksha and Upadhyaksha. Under the democracy set up, it is provided that if majority of the members not being less than 2/3 have or express their no-confidence in Adhyaksha or Upadhyaksha as the case may be, they can make a motion or send a proposal to the Assistant Commissioner, who in turn, has to convene a Special General Body Meeting within particular time limit calling all the members and to decide whether they have confidence or not in their leader viz., Adhyaksha or Upadhyaksha. In this regard, Rules called as Karnataka Panchayat Raj Rules 1994 have been framed.

6. Under Rule 3, procedure has been prescribed as to how these motions of no-confidence to be carried out. Clause (1) requires that, a written notice of intention to make the motion shall be in Form-I signed by not less than 1/3 of the total number of members together with a copy of the proposed motion to be delivered in person by any two of the members signing the notice to the Assistant Commissioner. As per Clause (2), the Assistant Commissioner thereafter shall convene a meeting for consideration of the motion at the office of the Gram Panchayat on the date appointed by him which shall not be later than 30 days from the date of which notice under Sub-rule (1) of Rule 3 was delivered. It is also mandatory requirement that he shall give to the members a notice of not less than 15 clear days of such meeting in Form-II.

7. No doubt, a reading of the provision show that it may be mandatory in nature. But we have to see whether non-compliance is only an irregularity or fatal to the motion itself.

8. In our view, in the present case, there is no dispute as to the signing of the motion by 2/3 members of the Panchayat. The only grievance of the appellant is that the said notice of intention to make the motion does not accompany the

proposed motion. If we peruse Form-I prescribed, it only shows that it is a letter to be addressed to the Assistant Commissioner intimating him that the members give notice of their intention to move Adhyaksha or Upadhyaksha of the Gram Panchayat as the case may be, to be removed from that office for want of confidence of majority of members.

9. Smt. Vidya, learned Government Advocate, has made available the notice. This is in Kannada. Apart from mentioning and complying with the requirements, the members have also mentioned therein, their proposal of the no-confidence motion and the reasons for the same also. The Panchayat members, instead of resorting to issuing notice accompanying the proposed motion, have complied both the requirements together in the application or notice of intention given to the Assistant Commissioner. The object of this notice and the accompaniment of the proposed motion is only to make aware the Authority viz., Assistant Commissioner and the person (Adhyaksha/Upadhyaksha), the intention of these members of making no-confidence motion.

10. On perusal of the records, especially the written notice, we find that there is substantial compliance of Rule 3(1) of the Rules. In such case, mere attracting the copy of the proposed motion would be duplicity of the work and that by itself cannot be a ground to set at not the democratic exercise of the members in functioning of these local Governments. When the notice of the majority members makes it clear their intention, mere non-enclosing the proposal would be only an irregularity and in our view does not cause any prejudice to the other side.

11. The learned Single Judge, in the case of Mallamma, has merely relied upon the language of Rule 3(1) and held that if the notice does not accompany (separately) the proposed motion of no-confidence, is bad in law. We do not agree with this proposition. In our view, non-compliance has to be seen in the background as to whether the same has caused any prejudice to the person aggrieved.

12. In the facts and circumstances of the present case and after perusal of the notice, we find that since the notice also incorporates the proposal of no-confidence motion, there is substantive compliance of the requirement of Rule 3(1) of the Rules. As such, the reliance placed by the learned Counsel in the case of Mallamma, is of no assistance to the facts of the case.

13. In view of our independent finding that there is no illegality committed, the finding of the learned Single Judge impugned herein, requires no reconsideration or interference. Hence, we find, the Writ Appeal is devoid of merits and the same is rejected.