

(2011) 09 KAR CK 0040

In the Karnataka High Court

Case No : Writ Petition No. 83585 of 2011 (LB and ELE)

Smt. Megha and Others

APPELLANT

Vs

Deputy Commissioner, Gulbarga and Another

RESPONDENT

Date of Decision : 05-09-2011

Acts Referred:

Citation : (2013) 1 AKR 421

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : R.J. Bhusare and B.V. Jalde, for the Appellant; Amresh S. Roja, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—Assailing the correctness or otherwise of the "No Confidence motion" notices moved against the Adhyaksha and Upadhyaksha, both dated 2nd September, 2011 issued to petitioners 1 and 2, by second respondent vide Annexures A and B, petitioners have presented this writ petition. The facts in brief are that, the first petitioner is the Adhyaksha, second petitioner is the Upadhyaksha and petitioners 3 to 6 are the members of the Town Municipal Council, Aland, Gulbarga District. They have called in question the impugned notices, issued to petitioners 1 and 2, calling for special general body meeting on 6th September, 2011 at 11:00 a.m. for moving "No Confidence motion" against them.

2. I have heard learned counsel appearing for petitioners and perused the entire material available on file.

3. It is the specific contention of the learned counsel appearing for petitioners that the impugned notices issued are contrary to the relevant provisions of the Karnataka Municipalities Act for the reason that only three days' clear notice is issued, including Saturday and Sunday, when in fact, sub-section (9) of Section 42 of the Karnataka Municipalities Act, 1964 (hereinafter referred to as "the Act")

for short) stipulates for at least ten days" clear notice of the intention to move the resolution. Therefore, he submits that the "No confidence motion" moved against the Adhyaksha and Upadhyaksha is liable to be set aside for violating the mandatory provisions of the Act.

4. After critical evaluation of the entire material placed before me, it is seen the impugned notices are issued for moving "No confidence motion" against the petitioners in the posts of Adhyaksha and Upadhyaksha respectively, fixing the date of special general body meeting on 6th September, 2011, at 11:00 a.m., in the Meeting Hall of the Municipality Office. The bone of contention of the petitioners is that there is no clear ten days" notice as required u/s 42(9) of the Act and therefore, it is liable to be quashed. In this regard, it is significant to note that out of 20 members of the Town Municipal Council, Aland, 14 members have submitted their requisition to the Adhyaksha of the Town Municipal Council, Aland, seeking to call for a special general body meeting as provided u/s 42(9) of the Act, to move the "No Confidence Motion" against the Adhyaksha and Upadhyaksha with a copy of the same to the second respondent, as early as, on 16th August, 2011. When the said request was neither considered nor any decision was taken on the same, the members had no other option but to submit a representation dated 2nd September, 2011 to the second respondent as provided under sub-sections (9) and (10) of Section 42 r/w. Section 48 of the Act, who in turn, has issued the impugned notice dated 2nd September, 2011, fixing the special general body meeting for moving "No confidence motion" against the petitioners 1 and 2 herein on 6th September, 2011, at 11:00 a.m. in the Meeting Hall of the Town Municipality Office. It is pertinent to note that here itself that, as per Section 48 of the Act, three days" clear notice is sufficient in a case of great urgency. In the case on hand, when majority members have requisitioned the Adhyaksha to call for a special general body meeting for moving "No confidence motion" against the Adhyaksha and Upadhyaksha as early as on 16th August, 2011 itself. The first I petitioner, being the Adhyaksha of the Town Municipal Council, has not been diligent in proceeding in accordance with the relevant provisions of the Act. Therefore, having no other alternative, the members were forced to submit a representation to the second respondent, who in turn, invoking sub-sections (9) and (10) of Section 49 r/w. Section 48 of the Act, has called for the special general body meeting, for moving the "No confidence motion" against the petitioners 1 and 2, giving three days" clear notice. I do not find any infirmity or unreasonableness in the impugned notices issued to petitioners 1 and 2. It is pertinent to note that when the members requisitioned the Adhyaksha/petitioner No. 1 regarding moving of "No confidence motion" on 16th August, 2011, the petitioners were well aware of the fact that the members have lost the confidence in them and are intending to move the "No confidence motion" against them. If that date is taken into consideration, then, it can be concluded that there was abundant time at the disposal of the petitioners 1 and 2 to take action. But, they have failed to do so. When once they have lost the confidence of majority of members, it is the duty of the elected

Adhyaksha or the Upadhyaksha to accept the same gracefully and face the no confidence motion and try to win their confidence with good deeds. Instead of that, approaching this Court at the eleventh hour, by filing the writ petition on 3rd September, 2011, when the special general body meeting to move the "No confidence motion" is scheduled to be held tomorrow, i.e. on 6th September, 2011, is not justifiable nor the same is appreciable. Hence, interference by this Court, at this hour is uncalled for nor the petitioners have made out a good ground to invoke the extraordinary jurisdiction of this Court, under Article 226 of the Constitution of India.

5. At this stage, learned counsel appearing for petitioners submits that the Division Bench of this Court in a reported judgment has held that there should be a clear ten days" notice for moving a "No confidence motion" and in the absence of the same, the proceedings to be held invalid. In this connection, it is worthwhile to refer to the judgment of the Hon"ble Apex Court in the case of K. Narasimhiah Vs. H.C. Singri Gowda, wherein at paragraphs 20 and 21, it has held thus:

20. We are, therefore, of opinion that the fact that some of the councillors received less than three clear days notice of the meeting did not by itself make the proceedings of the meeting on the resolution passed there invalid. These would be invalid only if the proceedings were prejudicially affected by such irregularity. As already stated, nineteen of the twenty councilors attended the meeting. Of these 19, 15 voted in favour of the resolution of no confidence against the appellant. There is thus absolutely no reason for thinking that the proceedings of the meeting were prejudicially affected by the "irregularity in the service of notice."

21. We have, therefore, come to the conclusion that the failure to give three clear days notice to some of the Councillors did not affect the validity of the meeting or the resolution of no confidence passed there against the appellant

(Emphasis supplied)

If the ratio of law laid down by the Apex Court in the aforesaid judgment is taken into consideration, it can be seen that in the case on hand, it is definitely not the case of the petitioners that the proceedings are prejudicially affected by any irregularity. Therefore, in view of the aforesaid decision also, the prayer sought for by petitioners cannot be considered and is liable to be rejected.

For the foregoing reasons, the writ petition filed by petitioners stands dismissed as devoid of merits. Ordered accordingly.

In view of disposal of main writ petition on merits, the prayer sought in I.A.I/2011 for impleading does not survive for consideration and is accordingly, dismissed.