

(2008) 10 KAR CK 0089
In the Karnataka High Court
Case No : Writ Petition No 31077 of 2008

Smt Muttavva Janigeri

APPELLANT

Vs

The Asst. Commissioner, Hirekanagai Gramapanchayathi,
Maruthi Basavanthappa Doddakurubar and Smt. Renuka
Fakkikeerappa

RESPONDENT

Date of Decision : 21-10-2008

Acts Referred:

Karnataka Panchayat Raj (Motion of no-confidence against Adhyaksha and
Upadhyaksha of Grama Panchayat) Rules, 1994 — Rule 3, 3 (2)
Karnataka Panchayat Raj Act, 1993 — Section 49

Citation : (2011) 4 KCCR 425 SN

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : S.G. Kadadakatti, for the Appellant; K. Vidyavati, HCGP for R-1, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Writ petition by the Adhyaksha, of Hirekanagai gram panchayat in Hangal taluk of Haveri district, who has questioned the legality of the notice dated 7-10-2008 [Annexure-P to the writ petition] issued by the assistant commissioner fixing the date of the meeting to be on 24-10-2008 for the purpose of moving a motion of no-confidence against the Petitioner.

2. The legality of the notice is questioned on many grounds.

3. Appearing for the Petitioner, Sri S.G. Kadadakatti, learned Counsel, with reference to the provisions of Section 49 of the Karnataka Panchayat Raj Act, 1993 [for short, the Act], would submit that in the first instance the notice is violative of the first proviso to Section 49, in the sense that it does not indicate that 10 days notice has been given of the intimation to move the resolution. The second ground urged is that the notice of motion moved by the members does not leave one year interval between the date of the Petitioner being elected as

Adhyaksha and the date of the notice. The third ground canvassed by the learned Counsel for the Petitioner is that the notice being not accompanied by a notice of motion in form No 1 and the attachment to the form No 1 which would have been given by the members, the notice is in violation of the Rule 3 of the Karnataka Panchayat Raj (Motion of no-confidence against Adhyaksha and Upadhyaksha of Grama Panchayat) Rules, 1994 [for short, the Rules).

4. The argument on the first ground is absurd for the reason that even the notice issued by the assistant commissioner at Annexure-P, which is dated 7-10-2008 by itself allows an interval of 14 days before the meeting taking place. Obviously the requisition itself would have been received prior to 7-10-2008 and therefore much more than 10 days interval is available.

5. The second ground of argument that one year period has not elapsed during which period the Petitioner was in office before the motion is moved, is again dependent on the earlier argument that one year's duration had not expired by the time the members moved the notice of motion of no-confidence. On a proper reading and understanding of the Section 49 of the Act, which reads as under:

49. Motion of no-confidence against Adhyaksha or Upadhyaksha of grama panchayat - Every Adhyaksha or Upadhyaksha of grama panchayat shall forthwith be deemed to have vacated his office if a resolution expressing want of confidence in him is passed by a majority of not less than two-thirds of the total number of members of the gram panchayat at a meeting specially convened for the purpose in accordance with the procedure as may be prescribed.

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 members and at least ten days notice has been given of the intention to move the resolution

Provided further that no resolution expressing want of confidence against an Adhyaksha or Upadhyaksha shall be moved within one year from the date of his election

Provided also that where a resolution expressing want of confidence in any Adhyaksha or Upadhyaksha has been considered and negated by a grama panchayat, a similar resolution in respect of the same Adhyaksha or Upadhyaksha shall not be given notice of, or moved, within one year from the date of the decision of the grama panchayat.

This argument also is not tenable for the reason that the second proviso to Section 49 only stipulates that a motion of no-confidence should not be carried in the sense it should not be passed in a meeting before the incumbent Adhyaksha has been in office for not less than one year. This requirement is more than met, as it is submitted by the learned Counsel for the Petitioner that the Petitioner had been elected as Adhyaksha in a meeting of the panchayat held on 29-9-2007 and the date of the meeting of the panchayat to test the motion of no-confidence against the Petitioner is fixed to be on 24-10-2008, which is much later than the

period of one year. This requirement in the second proviso to Section 49 is also fulfilled.

6. The third ground of argument also does not hold water for the reason that there is no requirement of notice issued by the assistant commissioner apprising the members and others of the date of meeting should be accompanied by form No 1 requisition that is given by the members. In terms of Rule 3(2) of the Rules there is no such requirement. Though it is a requirement under Sub-rule (1), it is a requirement which is one to be examined by the assistant commissioner before issuing the notice fixing the date of the meeting and it is an input for the assistant commissioner to satisfy himself for the issue of the notice fixing the meeting. It is not a requirement of Sub-rule (1) that the requisition given by the members moving the motion or a copy of the resolution should be appended to the notice. In the absence of any requirement in the Rule, the argument falls to the ground.

7. There is no violation which can affect the legality of the notice at Annexure-P calling for interference by this Court in exercise of writ jurisdiction. Even assuming that there are some technical infirmities regarding noncompliance with the requirement of Rule 3, they are not meritorious enough to interfere in a matter of this nature particularly as in a democratic system, persons in elected position should retain their positions only by retaining the confidence of requisite number of persons and not by resorting to technicalities. For this reason, this writ petition is not entertained further and is dismissed at the threshold.