
(2008) 11 AP CK 0002

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 17094, 17095 and 22896 of 2008

Smt. Srigiri Padma and Others

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 11-11-2008

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 245(1)
Andhra Pradesh Panchayat Raj Rules — Rule 3
General Clauses Act, 1897 — Section 9
Representation of the People Act, 1951 — Section 81

Citation : (2009) 1 ALD 236 : (2009) 1 ALT 478

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : P.V.L. Bhanu Praksh, in W.P. 17094 and 17095 of 2008 and V. Ravi Kiran Rao, in W.P. 22896 of 2008, for the Appellant; G.P. for Panchayat Raj, G.P. for Revenue, V.V. Prabhakar Rao and G. Elisha, for the Respondent

Judgement

L. Narasimha Reddy, J.—The petitioners in W.P. Nos. 17094 and 17095 of 2008 were elected as President and Vice-President respectively of the Thimmapur Mandal Parishad, Karimnagar District in the year 2006. They are said to have assumed office on 22.07.2006.

2. Ten Members of the Mandal Parishad submitted separate notices, dated 22.07.2008, in Form-II of the Rules published in G.O.Ms. No. 200, dated 28.04.1998 (for short "the Rules"), to the Revenue Divisional Officer, Karimnagar, with a prayer to convene meeting of the Mandal Parishad to take up the motion of no confidence against the President and Vice President of the Mandal Parishad. Acting on the requisitions, the Revenue Divisional Officer issued notice, dated 24.07.2008, in Form-V of the Rules proposing to convene the meeting of the Mandal Parishad on 18.08.2008, to consider the motion of no confidence against the President and Vice President. The motion of no confidence against both of them was carried and consequential orders were also issued. W.P. Nos. 17094 and 17095 of 2008 are filed assailing the proceedings, leading to the

unseating of the President and Vice President. It is urged that the requisitions in Form-II of the Rules were presented before expiry of two years and thereby, the whole proceedings are vitiated by operation of first proviso to Section 245(1) of the A.P. Panchayat Raj Act (for short "the Act"). W.P. No. 22896 is filed by one of the Members of the Mandal Parishad, with a prayer to direct the authorities under the Act and the Rules to take necessary steps to fill the resultant vacancies.

3. Heard Sri P.V.L. Bhanu Prakash, learned Counsel for the petitioners in W.P. Nos. 17094 & 17095 of 2008, Sri V. Ravi Kiran Rao, learned Counsel for the petitioner in W.P. No. 22896 of 2008 and the learned Government Pleader for Panchayat Raj.

4. No procedural irregularity is pointed out as to the presentation of requisitions in Form-II of the Rules vis-a-vis the posts of President and Vice-President, or the manner, in which the resolutions expressing want of confidence, were passed. The only objection is as to the very permissibility of submission of the requisitions in Form-II, on the ground that it is violative of first proviso to 245(1) of the Act. The relevant proviso reads as under:

Provided that no notice of motion under this section shall be made within two years of the date of assumption of office by the person against whom the motion is sought to be moved:

Provided further that no such notice shall be made against the same person more than once during his term of office.

5. From a perusal of the first proviso, it becomes evident that the prohibition contained in it is against issuing of notice of motion of no confidence "within two years" from the date of assumption of office by the concerned person. The President and the Vice-President are said to have assumed their offices on 22.07.2006. Two years" period from the date of assumption of charge expires on 21.07.2008. Notices were issued against them on 22.07.2008. Therefore, it cannot be said that the notices were issued in violation of the said proviso.

6. Sri Bhanu Prakash sought to draw analogy from Rule 3 of the Rules contained in G.O.Ms. No. 200 and contends that there must be clear gap of two years. A perusal of the said Rule discloses that the Legislature intended that a clear gap of 15 days, excluding the date of notice and date of meeting, must be maintained. Such an intention is not at all expressed in the context of prescribing the two years period in the said proviso. When the language employed in the two provisions is so different, it is difficult to apply the same parameters for both of them. The proviso does not insist that the date on which, the incumbent had assumed office, and the date of the proposed meeting must be excluded, while computing the two years period mentioned in it. If that were to be so, the language would have been identical to the one employed in Rule 3, which reads as under:

3.-----He shall give to every member of Gram Panchayat, Mandal Parishad or

Zilla Parishad, as the case may be, the notice of not less than fifteen clear days excluding the date of the notice and the date of the proposed meeting of such meeting in Form IV, or in Form V or in Form VI-----.

Therefore, it is difficult to accept the contention of the petitioners in W.P. No. 17094 and 17095 of 2008.

7. Reliance is placed upon the judgment of the Supreme Court in Tarun Prasad Chatterjee Vs. Dinanath Sharma, . That was in relation to the calculation of period of limitation for presenting an election petition under the Representation of the People Act, 1951. Section 81 of the Act prescribes 45 days of limitation "from the date of election of the candidate". Applying the principle underlying Section 9 of the General Clauses Act, 1897, the Supreme Court held that wherever, the word "from" is employed, in the calculation of period, under any provision, the first in the series of the days, must be excluded. Therefore, the date, on which, the candidate was declared elected was excluded and the election petition was found to be within limitation. Such is not the case here. The proviso does not employ the word "from". On the other hand, it uses the word "within". Therefore, it has to be seen whether the notice in Form-II was submitted within two years from the date of assumption of office. There is no provision, which warrants that the date, on which the candidate assumed the office, must be excluded. Hence, the ratio laid down by the Supreme Court in Tarun Prasad Chatterjee Vs. Dinanath Sharma, does not apply the facts of the case. Accordingly, W.P. Nos. 17094 and 17095 of 2008 deserve to be dismissed.

8. The resultant vacancies of the President and Vice President were not filled on account of the pendency of W.P. Nos. 17094 and 17095 of 2008. Now that the said writ petitions are being disposed of, steps need to be taken to fill the Vacancies in accordance with law.

9. For the foregoing reasons, W.P. Nos. 17094 and 17095 of 2008 are dismissed and W.P. No. 22896 of 2008 is allowed, directing that steps shall be initiated for filling the resultant vacancies of President and Vice-President of Thimmapur Mandal Parishad, Karimnagar District; and the entire exercise shall be completed within a period of one (1) month from the date of receipt of a copy of this order.

There shall be no order as to costs.