

(2013) 10 KAR CK 0285

In the Karnataka High Court

Case No : Writ Petition No's. 48607 and 48842 of 2013 (APMC)

Smt. Tharadevi

APPELLANT

Vs

The Director, APMC and APMC

RESPONDENT

Date of Decision : 28-10-2013

Acts Referred:

Citation : (2014) 1 AKR 584 : (2014) ILR (Kar) 986 : (2014) 2 KarLJ 397 :
(2014) 1 KCCR 250

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : K.M. Nataraj for Sri Aruna Shyam M, for the Appellant;

Final Decision : Dismissed

Judgement

B.S. Patil, J.—In this writ petition, petitioner is calling in question the notice dated 17.10.2013 issued by the Secretary of 2nd respondent - Agricultural Produce Market Committee, Batawade, Tumkur (for short, "APMC"), thereby convening the meeting regarding the no-confidence motion moved against the petitioner on 29.10.2013 at 11.00 a.m. on the requisition submitted by the members of the APMC. As many as 12 elected members of the respondent-APMC have addressed a letter dated 30.09.2013 expressing their intention to a move a no-confidence motion to the Secretary to convene the meeting of the APMC in that regard. This notice clearly states that as the present President-petitioner herein was not taking the other members into confidence and was making decisions unilaterally with regard to the affairs of the Committee without giving any deference to the views of the members, the members had decided to move the no-confidence motion against her and it was in that regard that they were requesting the Secretary to convene a meeting to consider the no-confidence motion. Based on the same, the Secretary has convened the meeting on 29.10.2013 by issuing the impugned communication dated 17.10.2013, in exercise of the powers conferred u/s 44 of the Karnataka Agricultural Produce Marketing (Regulation and Development) Act, 1966 (for short, "the Act").

2. Learned Senior Counsel Mr. K.M. Nataraj appearing for the petitioner contends that as per the provisions of the Act and the Karnataka Agricultural Produce Marketing (Regulation and Development) Rules, 1968, (for short, "the Rules"), particularly Section 44 read with Rule 49 of the Rules and Form-27 appended to the Rules, it is clear that a particular format is prescribed for submitting the requisition expressing the intention to move the no-confidence motion. In Form-27, the members are required to declare that the facts stated in the requisition were true to the best of their information and knowledge and the persons who support the proposal will have to separately affix their signatures. He urges that as this requirement of submitting the requisition strictly as per Form-27 and the Rules was not complied with, the notice issued is illegal. In support of his contention, he has placed reliance on the Pull Bench decision of this Court in the case of C. Puttaswamy vs. Smt. Prema, decided on 24.02.1992 rendered in W.A. No. 2332/1991 and connected case. Reliance is also placed by him on the judgment of the Bombay High Court in the case of Ganeshsinha Domansingha Hajari Vs. Commissioner, Nagpur Division, .

3. I have carefully considered the pleadings, the documents on record and the contentions urged by the learned Senior Counsel.

4. In the light of the provisions contained in Section 44 of the Act, Rule 49 of the Rules and Form-27 appended to the Rules and also the judgments relied upon, a careful reading of Annexure-A - requisition submitted by the 12 elected members of the APMC, unmistakably discloses that they have expressed their specific intention to the Secretary of the APM C to convene the meeting of the Committee for consideration of the no-confidence motion. They have stated the reason why they are intending to express their no-confidence in the present President. They have also stated that they have specifically agreed to express the no-confidence in the President and in that connection only they have signed the requisition and were requesting the Secretary to convene the meeting. The tenor of the notice issued by the 12 members of the Committee, in my considered view, substantially complies with the requirement mentioned in Form-27.

5. Rule 49(1) of the Rules reads as under:

49. Motion of no-confidence against Chairman or Vice-chairman,- (1) Notice of a motion of no-confidence against the Chairman or Vice-Chairman of the committee shall be in writing addressed to the Secretary in Form-27 signed by the member of the committee who intends to move the motion and shall contain the signatures of not less than one-third of the total number of members of the committee supporting the notice. In case the motion of no-confidence is against both the Chairman and Vice-Chairman, separate notices, one in respect of the Chairman and the other in respect of the Vice-Chairman shall be given in the manner aforesaid.

(2) On receipt of the notice under sub-rule (1) the Secretary shall intimate the same to the Director of Agricultural Marketing.

(3) In the meeting of the committee in which a motion of no-confidence is for consideration, while such motion is being considered.-

(i) The Vice-Chairman if the motion of no-confidence is against the Chairman;

(ii) The Chairman if the motion of no-confidence is against the Vice-Chairman; and

(iii) The Director of Agricultural Marketing or an Officer authorized by him, if a motion of no-confidence is moved both against the Chairman and the Vice-Chairman; shall preside.

(4) Save as otherwise provided in the Act, a meeting convened for the purpose of considering a motion under this Rule shall not for any reason be adjourned.

(5) The Secretary shall communicate forthwith to the Director of Agricultural Marketing, the decision taken by the committee on any motion of no-confidence together with the names of all the members of the committee present at the meeting and number of votes given in favour of or against such motion. He shall also forward at the same time to each member present at the meeting a copy of the motion and the result of the voting thereon.

6. Form-27 appended to the Rules reads as under:

FORM-27 [See Rule 49(1)]

Form of Notice of motion of no-confidence

To

The Secretary of the market committee,

.....

Dear Sir,

I/We

.....Member/Members of the market committeeintend to move a motion of no-confidence against the Chairman/Vice-Chairman for the following reasons.

I/We declare that the facts stated above is/are true to the best of my/our information and knowledge.

We support the above notice,

.....

.....

..... (Signature/s)

7. In the instant case, all the legal requirements of a valid notice/requisition as provided in Rule 49 have been substantially complied. The members have mentioned specifically the reason why they have decided to move no-confidence motion. The contention urged is that in the requisition submitted to the Secretary, there is no declaration made by them stating what they had stated was true to the best of their information and knowledge. There is also nothing to show that there were supporters who had separately signed the notice stating that they supported the above notice.

8. Nothing is stated in the Rules that in case the requisition was not strictly in accordance with the form prescribed in Form-27, such notice shall not have any effect or that the meeting convened based on such notice would be rendered illegal. In other words, the consequence of the notice not being issued strictly in the form prescribed is not spelt out. In such circumstance, this Court will not be justified in holding that any variance in the form of notice issued compared to the one prescribed in Form-27 would render the proceedings initiated for no-confidence invalid. The Court is required to look into the substantial compliance of the requirement and not merely the letter of the provision. This approach has to be adopted keeping in mind the democratic principle underlying the whole process. It is not the case made out before this Court that the requisition submitted has been manipulated and it did not stem out of the voluntary action of the members. It is also not shown how the petitioner is prejudiced in the matter because of the requisition not strictly conforming to the format prescribed.

9. Reliance placed by the learned Senior Counsel on the Full Bench decision of this Court in the case of C. Puttaswamy vs. Smt. Prema, decided on 24.02.1992 in W.A. No. 2332/1991 and connected case, is not apposite to the facts of the present case. In the said case the question was with regard to the requirement of 15 days notice to be issued before convening the no-confidence motion in terms of the provision contained u/s 47(3) of the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983. Dealing with the said provision, this Court took note of the law laid down by the Apex Court that a procedural rule ordinarily should not be construed as mandatory if the defect in the act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage unless by according such permission to rectify the error later on, another rule would be contravened and that whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that such requirement was not mandatory and the specified consequence should not follow. This Court proceeded to hold that Section 47 of the said Act was a complete code in itself, deliberately provided by the legislature having regard to the importance of the elective office of the Pradhan and Up-pradhan. It emphasized the need to ensure their stability in office and, to promote the objectives of the Mandal Panchayats.

10. In the instant case, no such procedural requirement of issuing notice of specified period is contravened. What is alleged is, that the notice has not been issued in the prescribed form. Therefore, the facts of the present case do not have any bearing on the facts involved in the aforementioned judgment.

11. Similarly, the judgment of the Bombay High Court, on which reliance is placed by the learned Senior Counsel is with regard to non-compliance of the specific requirement that notice must accompany the grounds on which motion of no-confidence was proposed to be moved as the provision in that regard had been made in the Rules known as Maharashtra Zilla Parishads Presiding Authorities (No confidence Motion) Rules, 1962. The Court in the facts and circumstances of the said case, refused to consider the said requirement as merely directory stating that otherwise it would defeat the object of the very Rules.

12. In the instant case, no such requirement of mentioning the grounds for no-confidence motion is contravened. In fact the grounds are mentioned in the requisition. Therefore, the said judgment has also no application to the facts of the case.

13. On the other hand, a Division Bench of this Court in the case of Smt. Laxmavva vs. The State of Karnataka in W.A. No. 88/2007 dated 23.01.2007, has held that in matters such as this, substantial compliance of the Rules has to be seen. The Court held that as the notice issued by the majority of members made it clear that they intended to move no-confidence motion, mere non-enclosure of the proposal would be only an irregularity and will not result in rendering the whole process vitiated because it would not cause any prejudice to the other side.

14. Therefore, mere fact that notice of no-confidence motion was not strictly in the format prescribed in Form-27 cannot be said to vitiate the entire process as the same will not in any manner prejudice the interest of the petitioner because in all other respects, the notice of no-confidence motion complied with the requirement of the provisions of Rule 49 of the Rules. Hence, there is absolutely no merit in this writ petition. The same is, therefore, dismissed.