

(2003) 08 KAR CK 0066

In the Karnataka High Court

Case No : Writ Petition No's. 4728 and 5939 of 2003

Smt. Yashodamma G.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 06-08-2003

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 11, 11 (1), 11 (1) (b), 2 (6), 42

Citation : (2003) 5 KarLJ 346 : (2004) 3 KCCR 328 SN

Hon'ble Judges : Chandrashekaraiah, J

Bench : Single Bench

Advocate : T. Narayanaswamy, in W.P. No. 4728 of 2003, Shantesh Gureddi, in W.P. No. 5939 of 2003, A. Nagarajappa, for Impleading Applicant in I.A. No. 4 of 2003, for the Appellant; G. Nagaraj Naidu, High Court Government Pleader for Respondents-1 and 2 in W.P. No. 4728 of 2003 and for Respondents-1 and 21 in W.P. No. 5939 of 2003, A.S. Mahesha, for Respondent-3 in W.P. No. 4728 of 2003, G.V. Shantaraju and Kesvy and Company, for Respondent-4 in W.P. No. 4728 of 2003, V. Laxminarayana, Adv for Caveator-Respondents-3 to 15 in W.P. No. 5939 of 2003, S. Raju, for Respondent-2 in W.P. No. 5939 of 2003 and Ramachandra R. Naik, for Respondents-16 to 20 in W.P. No. 5939 of 2003, for the Respondent

Final Decision : Allowed

Judgement

Chandrashekaraiah, J.—Since common question of law is involved in these two writ petitions, these writ petitions are disposed of by a common order.

2. The facts in these two cases are as follows.--

The petitioner in W.P. No. 4728 of 2003 is the elected President of the third respondent-Kadur Municipal Council. Seventeen councillors of the Kadur Municipal Council submitted a representation to the President on 9-1-2003 to call for the meeting to consider the motion of no confidence moved against the petitioner. On the basis of this representation, the Chief Officer called a special general meeting on 30-1-2003 by notice dated 21-1-2003. Accordingly, the special meeting was held on 30-1-2003. 28 councillors attended the said

meeting. Out of 28, 17 councillors voted in favour of the motion whereas, 7 councillors voted against the motion. On the basis of the said resolution the official memorandum dated 5-2-2003 was issued by the Deputy Commissioner, Chickmagalur District, Chickmagalur, stating that the motion has been carried by 2/3rds majority and accordingly, declared the post of President as vacant. This has been called in question by the petitioner in this writ petition.

3. The total number of members of the Kadur Municipal Council consists of 30. Out of 30, 23 are elected, 5 nominated and one MLA and one MP. The contention of the petitioner in this writ petition is that out of the total number of members of the Municipal Council, the persons voted in favour of the motion are only 17 and as 17 councillors do not represent 2/3rds of the total number of members of the Municipal Council present in the meeting, the notification issued by the Deputy Commissioner as per Annexure-G is illegal.

4. The petitioner in W.P. No. 5939 of 2003 is the elected President of the second respondent-Town Municipal Council, Sira. 1/3rd of the total number of members of the Sira Municipal Council gave a notice requesting to call for a special general meeting of the Municipal Council to consider the motion of no confidence. On that notice a meeting was called on 30-2-2003 to consider the motion of no confidence. In the said meeting 24 municipal councillors participated. Out of 24 municipal councillors, 12 persons voted in favour of the motion whereas, 5 persons voted against the motion. On the basis of these proceedings the Chief Officer of the Municipal Council issued a notification stating that the motion of no confidence was carried by 2/3rds majority and accordingly, ordered removal of the petitioner from the post of Adhyaksha. This notification and the resolution are called in question by the petitioner in this writ petition.

5. The total number of municipal councillors of the Municipal Council, Sira is 30. Out of 30, 23 are elected, 5 are nominated, one MLA and one MP. But, the persons present in the special general meeting were 19 elected and 5 nominated. Out of 24, as stated earlier, 14 persons voted in favour of the motion and 5 persons voted against the motion. According to the petitioner, 14 persons who voted in favour of the resolution do not constitute 2/3rds of the total number of members present in the meeting and therefore, the resolution and the notification are illegal.

6. The questions that arise for consideration in these two writ petitions are as follows.--

(i) Whether the nominated members of the municipal council who were present in the meeting and who have no right to vote in the meeting are to be counted for the purpose of quantifying the 2/3rds of the total number of councillors?

(ii) Is 2/3rds of the total number of members of the Municipal Council, as provided u/s 11 of the Act or the persons who were present at the special meeting to be taken in view of the word "at" found in Section 42(g) of the Act.

Point No. 1:

Section 2(4) of the Karnataka Municipalities Act, 1964 (hereinafter referred to as the "Act") defines the words "City Municipal Council" as follows.--

" "City Municipal Council" means a city municipal council established under this Act".

Section 2(6) of the Act defines the word "Councillor" as follows.--

""Councillor" means any person who is legally a member of the municipal council or Town Panchayat".

Section 2(14) of the Act defines the words "Municipal Council" as follows.--

"2(14) "Municipal Council" means the council of a town or city municipal area established under this Act".

Section 11 of the Act reads as follows.--

"11. Constitution of municipal councils.-(1) The municipal council shall consist of--

(a) such number of directly elected councillors specified in column

(3) of the table below in respect of the municipal areas specified in the corresponding entries in column (2) thereof, namely.--

TABLE

Sl. No.

Population of the municipal area

Number of Councillors

(1)

(2)

(3)

(1)

for a municipal area with a population of not less than 20,000 but less than 40,000

23

(2)

for a municipal area with a population of not less than 40,000 but less than 50,000

27

(3)

for a municipal area with a population of not less than 50,000 but less than one lakh

31

(4)

for a municipal area with a population of not less than one lakh but less than three lakhs

35

(b) not more than five persons nominated by the Government from amongst the residents of the municipal area and who are--

(i) persons having special knowledge and experience in municipal administration or matters relating to health, town planning or education; or

(ii) social workers;

(c) the members of the House of the People and the members of the State Legislative Assembly, representing a part or whole of the municipal area whose constituencies lie within the municipal area;

(d) the members of the Council of States and members of the State Legislative Council registered as electors within the municipal area:

Provided that the persons referred to in Clause (b) shall not have the right to vote in the meetings of the municipal council".

Section 47 of the Act reads as follows.--

Section 47. Meeting.--(1) The municipal council shall ordinarily hold at least one meeting in every month for the transaction of business which shall be called an ordinary general meeting.

(2) The President may, whenever he thinks fit, and shall, upon the written request of not less than one-third of the whole number of councillors and for a date not more than fifteen days after the presentation of such request, call a special general meeting.

(3) If the President fails to call a special general meeting as provided in Sub-section (2), the Vice-President or one-third of the whole number of councillors may call such meeting for a day not more than thirty days after the presentation of such request and require the Chief Officer or the Municipal Commissioner to give notice to the councillors and take such action as may be necessary to convene the meeting".

Section 48 of the Act provides for issuance of notice of the meeting both for ordinary general meeting and special general meeting.

Under Section 42 of the Act, for every municipal council, there shall be a

President and a Vice-President.

Under Section 42(2) of the Act, the President and the Vice-President are to be chosen from among the elected councillors.

Section 42(9) of the Act provides for removal of the President and the Vice-President by passing a motion of no confidence which reads as follows.--

"Every President and every Vice-President of a municipal council 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 councillors at a special general meeting convened for the purpose:

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

Provided further that where a resolution expressing want of confidence in any President or Vice-President has been considered and negatived by a municipal council, a similar resolution in respect of the same President or Vice-President shall not be given notice of or moved within one year from the date of the decision of the municipal council".

Under Section 42(9) of the Act a notice of motion of no confidence is to be signed by not less than 1/3rd of the total number of councillors.

7. In these two cases it is not disputed that the notices of motion of no confidence were signed by 1/3rd of the total number of councillors.

8. Under proviso to Section 11(1) of the Act, the persons who are nominated u/s 11(1)(b) of the Act as councillors of the municipal council have no right to vote in the meeting of the municipal council. But, they are entitled to participate in the proceedings of the meeting. The contention of the learned Counsels appearing for the petitioners is that the persons, who are nominated as councillors, though have no right to vote, are to be taken into account for the purpose of calculating 2/3rds of the total number of members, if they are present at the special general meeting.

In W.P. No. 4728 of 2003, out of the total number of 30 municipal councillors, 23 elected members, four nominated members and one MLA were present in the special general meeting.

In W.P. No. 5939 of 2003 out of total number of 30 municipal councillors, 19 elected members and 5 nominated members were present in the special general meeting.

9. The councillor as defined under the Act means any person who is legally the member of municipal council. Section 11 of the Act provides for constitution of the municipal council. u/s 11(1)(b) of the Act, the State Government may nominate not more than five persons as councillors. The proviso to Section 11(1)

of the Act provides that the nominated members shall not have a right to vote in the meeting, but they are entitled to participate in the meeting. Section 42(9) of the Act provides that the President of the municipal council shall 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 2/3rds of the total number of councillors at a special general meeting.

10. The Division Bench of this Court in the case of Smt. Chandubi v. Deputy Commissioner, Chitradurga District, Chitradurga and Ors., W.P. No. 12320 of 1997, DD : 10-12-1997 (Kar.) (DB), had an occasion to consider Section 42(9) of the Act. In this case it is held as follows.--

"Whether it is the two-thirds of total number of councillors of the Taluk Panchayat or the persons who are actually present in the special meeting for "No confidence", if the wordings of Section 42(9) of the Act are considered, it has to be held that the "No confidence Motion" has to be passed by a majority of not less than two-thirds of the total members of councillors at a special general body meeting. The mentioning of the word "at" signifies that it has to be read as present at the time of special general body meeting. Otherwise if the intention of the Legislature was to include all the councillors whether present or not the word "at" would not be in the section. The decision referred to in this regard in the case of S. Shivashankarappa and Others Vs. The Davangere City Municipality, Davangere and Others, , in our opinion, it is not a correct proposition of law. In that case the learned Single Judge was only concentrating on the words "total number of councillors" and was of the opinion that as there is no word like number of existing councillors used, the number should be total number of members of the councillors. As we have noted the word "at" at the special general body meeting has a specific meaning i.e., present at the meeting, then it has to be held answering point No. 2 for consideration that it is only the two-thirds of the members present at the time of special general body meeting which has to be considered for the "No Confidence Motion" and not total number of councillors as provided u/s 11 of the Act".

From the reading of this judgment it is clear that the councillors who are present at the special meeting is, to be taken for the purpose of quantifying 2/3rds of the total number of councillors and not the whole number of municipal councillors. In view of the above said decision I hold that the nominated members, though they have no right to vote in the meeting, as they are the councillors as defined under the Act, if they are present at the special meeting are to be counted for the purpose of quantifying 2/3rds of the total number of councillors.

11. But, for the purpose of moving a motion of no confidence either against the President or the Vice-President, 1/3rd of the total number of municipal councillors as provided u/s 11 of the Act are required to sign the notice of motion as provided under proviso to Section 42(9) of the Act.

12. Point No. 2:

The next question that requires to be considered is whether the nominated members, who were present at the meeting are to be taken for the purpose of calculating 2/3rd of the members present at the meeting. The Supreme Court in the case of *Raees Ahmad Vs. State of U.P. and Others*, , has held as follows.--

"Section 87-A of the Uttar Pradesh Municipalities Act, 1916 deals with a motion of no confidence against the President. Sub-section (12) thereof reads:

"(12) The motion shall be deemed to have been carried only when it has been passed by a majority of two-thirds of the total number of members of municipality".

Section 9(d) of the said Act deals with the composition of a municipality and states that it shall consist of a President, elected members, ex officio members and nominated members. Nominated members are mentioned in Sub-Clause (d) thereof and the proviso thereto states:

Provided that the persons referred to in Clause (d) shall not have the right to vote in the meetings of the municipality".

It will be noticed that nominated members are part of the composition of the municipality and are referred to in the statute as the nominated members thereof. For the purpose of finding whether a motion for no confidence against the President has been carried, what has to be seen is whether it has been passed by "a majority of two-thirds of the total number of members of the municipality". There can be no doubt, therefore, that, on a plain construction of the statute the number of the nominated members has to be taken into account in determining whether or not a motion of no confidence against the President has been carried.

On behalf of the respondent emphasis is laid upon the proviso quoted above which states that nominated members shall not have the right to vote in the meeting of the municipality. It is contended that inasmuch as the nominated members do not have the right to vote in the meetings of the municipality, they should not be counted as part of the total number of the members of the municipality, two-thirds of whose vote in favour is requisite for the passage of the motion of no confidence. We find it difficult to accept this submission, given the plain words of the provisions quoted above. That nominated members may not vote does not imply that they cease to be members of the municipality or that their number should be ignored in determining whether the President has lost the confidence of two-thirds of the members. So calculated, the vote of confidence against the President had not been carried as required".

From this judgment it is clear that the nominated members are part of the composition of the municipal council as they are legally the members of the Municipal Council as defined u/s 2(6) of the Act. If that is so, 2/3rds of the total number of members of municipal council which includes elected, nominated, Members of the House of People and Members of State Legislative Assembly, if

they are present at the special meeting are to be taken for counting in view of the word "at" found in Section 42(9) of the Act.

13. In the facts and circumstances of the case, if the nominated members in both the cases are taken for the purpose of quantifying 2/3rds of the total number of members present at the special general meeting, the resolution is not earned by 2/3rds of the total number of councillors present at the special general meeting. If that is so, both the writ petitions are to be allowed and the impugned resolutions and the notifications are to be quashed.

14. In the result, I pass the following order:

- (i) Writ petitions are allowed;
- (ii) The impugned order and the resolutions are quashed.