

(2018) 12 KAR CK 0007

In the Karnataka High Court

Case No : Writ Petition No. 55252 Of 2018 (Lb-Ele)

Sri. Harisha I.E.

APPELLANT

Vs

State of Karnataka And Ors

RESPONDENT

Date of Decision : 12-12-2018

Acts Referred:

Karnataka Gram Swaraj and Panchayat Raj Act, 1993 — Section 49
Karnataka Panchayath Raj (Motion of No-confidence against Adhyaksha and
Upadhyaksha of Gram Panchayat) Rules, 1994 — Rule 3(6), 7

Citation : (2018) 12 KAR CK 0007

Hon'ble Judges : S. Sunil Dutt Yadav, J

Bench : Single Bench

Advocate : Sadashivaiah K.G, Mamatha Honnapur

Final Decision : Dismissed

Judgement

1. Learned Additional Government Advocate accepts notice for respondent Nos.1 and 2.
2. The petitioner, who is the President of respondent No.3-Ichanahally Gram Panchayath, has challenged the notice as at Annexure-A whereby respondent No.2 has called for a meeting to consider Motion of No-confidence moved by the members on 14.12.2018.
3. The facts as put forth by the petitioner is that the Motion of No-confidence on an earlier occasion was sought to be considered in a meeting convened by the Assistant Commissioner and as per the order by the Assistant Commissioner at Annexure-H, the Assistant Commissioner has recorded that as none of the members were present on 22.11.2018, the Motion of No-confidence that was moved could not be considered and in terms of Rule 3(6) of the Karnataka Panchayath Raj (Motion of No-confidence against Adhyaksha and Upadhyaksha of Gram Panchayat) Rules, 1994 (hereinafter referred as ' the Rules') has dissolved the meeting due to lack of quorum and has declared that the notice dated 07.11.2018 moving the Motion of No Confidence stood lapsed in terms of Rule

3(6) of the Rules.

4. The petitioner states that subsequently, the members have again instituted a fresh complaint on 23.11.2018 and taking note of the same, the Assistant Commissioner has issued notice fixing 14.12.2018 as a date for considering Motion of No-confidence on the basis of complaint of the members made at Annexure-J.

5. The sole contention advanced by the petitioner is that in terms of 3rd proviso to Section 49 of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993 (hereinafter referred as 'the Act'), there is a bar to move a fresh resolution of No-confidence once it has been considered and negatived by the Gram Panchyat in its meeting held on 22.11.2018 for a period of two years from the date of the decision of Gram Panchyat.

6. Learned Additional Government Advocate contends that on an earlier occasion on 22.11.2018, there was no consideration of the Motion of No-confidence as the Assistant Commissioner, in exercise of the powers conferred under Rule 3(6) of the Rules has dissolved the meeting and declared that the notice issued by respondent No.2 has lapsed and further states that the Motion of No-confidence on 22.11.2018 cannot be said to have been considered and negatived as there was no quorum for the meeting that was convened on 22.11.2018 and consequently the Motion of No-confidence has lapsed.

7. The petitioner and learned Additional Government Advocate relies on the judgment of this Court passed in W.A.Nos.1202-1204/2014 wherein this Court while considering a similar contention as made out in the present facts has observed at para No.4 that the bar as contemplated under 3rd proviso to Section 49 of the Act would not apply as none of the members of the Panchayath were present in the said meeting, holding that Motion of No-confidence was not considered.

8. Having heard both the counsel, it is to be noted that a bar under 3rd Proviso to Section 49 of the Act is very clear and 3rd proviso reads as follows:

"Provided also that where a resolution expressing want of confidence in any Adhyaksha or Upadhyaksha has been considered and negatived by a Grama Panchayat a similar resolution in respect of the same Adhyaksha or Upadhyaksha shall not be given notice of, or moved, within two years from the date of the decision of the Grama Panchayat".

9. On a bare reading it becomes clear that for the bar to apply the resolution must have been "considered and negatived by the Gram Panchayat".

10. It is clear that as per Rule 3(6) of the Karnataka Panchayath Raj (Motion of No-confidence against Adhyaksha and Upadhyaksha of Gram Panchayat) Rules, 1994, in the absence of quorum within one hour of the time fixed convening the meeting "the meeting shall stand dissolved and the notice given under Sub-rule(1) shall lapse". The meeting has been dissolved as per the order at

Annexure-H and there has been a declaration that the notice has lapsed. Once the meeting stood dissolved as per rule 3(6), there was no consideration of the Motion of No-confidence as it was not put to vote as contemplated under rule 7. It is clear that bar under 3rd proviso would come into operation only where a resolution has been considered and negatived and once notice itself is declared to have lapsed the meeting is dissolved and there being no consideration of the said resolution it cannot be said the resolution was considered and negatived.

Accordingly, the petition is dismissed in the light of the observations made above.