
(1997) 07 KAR CK 0059

In the Karnataka High Court

Case No : Writ Petition No's. 13886, 16533 and 16738 of 1997

Subhash Tukaram Sangaonkar

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 03-07-1997

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 322, 42 (9)
Mysore Town Municipalities Act, 1933 — Section 27 (3)

Citation : (1997) ILR (Kar) 2607 : (1998) 2 KarLJ 26

Hon'ble Judges : Chandrashekaraiah, J

Bench : Single Bench

Advocate : H.B. Datar, Sri Basavaprabhu S. Patil and Sri G. Balakrishna Shahstry, for the Appellant; Sri A. Nagarajappa, Government Advocate, Sri S.S. Chikmath and Sri Jayakumar S. Patil, for the Respondent

Judgement

1. In all these writ petitions the resolution dated 14-5-1997, removing the President and the Vice-President of the City Municipal Council, Nippani by passing a no confidence motion has been challenged.

2. The total strength of the City Municipal Council, Nippani, is 36. The petitioners in Writ Petition Nos. 16533 and 16738 of 1997, were elected as President and Vice-President respectively on 13-2-1996. Thereafter 26 Councillors delivered the notice of intention to move the resolution as against the President and the Vice-President to the Personal Assistant of the President on 2-5-1997. The said notice was placed before President on 3-5-1997 to take appropriate steps. This fact is disputed by the President stating that it was placed before her on 5-5-1997 and not on 3-5-1997. It is seen that the President on 5-5-1997 asked the Commissioner to call for the meeting fixing the date of meeting as 14-5-1997 to consider the motion of no confidence. Accordingly, the meeting was called fixing the date of meeting as 14-5-1997. In the said meeting a resolution was passed by 2/3rd majority removing the President and the Vice-President from their posts of President and Vice-President respectively. The said resolution was challenged by way of preferring a revision petition before the Divisional Commissioner u/s

322 of the Karnataka Municipalities Act, 1964 (hereinafter referred to as "the Act"). The Divisional Commissioner dismissed the petition holding that there is no illegality in passing the resolution of no confidence motion. Therefore, the petitioners before the Divisional Commissioner are before this Court.

3. One Councillor who has not challenged the resolution by way of revision petition before the Divisional Commissioner has filed Writ Petition No. 13886 of 1997 directly challenging the resolution. Since in all these petitions the question involved is common, all these petitions were heard together.

4. Sri H.B. Datar, learned Senior Counsel appearing for some of the petitioners, submitted that the Councillors and the President of the Municipal Council had no notice of 10 days of intention to move the resolution as required u/s 42(9) proviso of the Act and the resolution ultimately passed on the basis of defective notice is illegal. In support of this proposition he cited a decision in case of *Janardhana v Deputy Commissioner, Bijapur*. In the said decision the Division Bench has held as follows:

"The first proviso to sub-section (9) of Section 42 of the Act requires at least ten days notice of the no confidence motion. When there was no clear gap of 10 days between the issue of the notice and the holding of the meeting, any resolution passed at a meeting called before the expiry of 10 days, whatever may be the result of the meeting, cannot be considered as valid. A resolution passed in breach of a statutory provision cannot be upheld".

In the case on hand, the notice of meeting is dated 5-5-1997 and the meeting was held on 14-5-1997. Therefore, it is contended that as there is no 10 days gap between the issue of the notice and the holding of the meeting, the resolution ultimately passed on the basis of the defective notice is illegal.

5. Sri Jayakumar S. Patil, learned Counsel, appearing for the contesting respondents submitted that the law laid down in the said decision has no binding effect, as it has been rendered without noticing the decision of the Supreme Court in the case of *K. Narasimhiah Vs. H.C. Singri Gowda*. In the above said decision the Supreme Court had an occasion to consider a provision which is identical with that of the proviso to Section 42(9) of the Act. Section 42(9) of the Act 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".

Proviso to Section 27(3) of the Mysore Town Municipalities Act reads as follows:

"Provided that no such resolution shall be moved unless notice of the resolution is signed by not less than one third of the whole number of Councillors and at least fifteen days notice has been given of the intention to move the resolution".

This proviso is identical with that of the proviso to Section 42(9) of the Act. The Supreme Court while interpreting the said section has held as follows:

"..... Admittedly, the notice was signed by more than one-third of the whole number of Councillors. It is said, however, that fifteen days" notice of the intention to move the resolution was not given. This argument which Mr. Iyengar addressed to us but which does not appear to have been urged before the High Court -- proceeds on the assumption that fifteen days" notice of the intention to move the resolution has to be given not only to the President but also to the other councillors. We do not think that assumption is justified. In our opinion, what is required is that fifteen days" notice of the intention to move the resolution has to be given to the President. In other words, all that is required is that before the resolution is actually moved the President has got fifteen days" notice. In the present case, the meeting was held on October 14th, and the President received the notice on 25th September. There was thus more than 15 days" notice given to him".

In the case on hand also the notice that is required to be given as per Section 42(9) is only to the President and not to the Councillors. Therefore, the judgment rendered by the Division Bench referred to above is given per incuriam as it has been rendered without noticing the decision of the Supreme Court. Therefore, there is no substance in the contention of Sri Datar, learned Senior Counsel for the petitioner that a notice of ten days is required to be given to the President, Vice-President and the Councillors as per the proviso referred to above.

6. Section 47 provides for calling a meeting. Sub-sections (2) and (3) of Section 47 reads as follows:

"The President may whenever he thinks fit, and shall, upon 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.

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 councillor and take such action as necessary to convene the meeting".

From the reading of the above said provision it is clear that after giving notice of intention of moving a motion of no confidence as required under proviso to Section 42(9) of the Act, the meeting shall be called for as provided under sub-section (2) of Section 47 of the Act. In the case on hand, even taking the date of

notice as 5-5-1997, the meeting held on 14-5-1997 is valid as there is no breach of law in passing the resolution.

7. The notice of motion of no confidence was signed by 24 members of the Council. That consists of more than two-thirds of the total number of members of the Municipal Council. The resolution has also been carried by two-thirds majority as seen from the resolution. When such being the case, there is no reason to impose a person who has no confidence of more than two-thirds of the members of the Municipal Council. Therefore, in my opinion, these are not the cases which call for interference under Article 226 of the Constitution of India. Accordingly, these petitions are rejected.