
(2009) 10 AP CK 0023

In the Andhra Pradesh High Court

Case No : Writ Petition No. 22704 of 2009

Suleman Bin Sayeed

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 26-10-2009

Acts Referred:

Andhra Pradesh Municipalities Act, 1965 — Section 46, 46(1), 46(2), 46(3)

Citation : (2009) 6 ALD 753 : (2009) 6 ALT 554

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : S. Jagadish, for the Appellant; G.P., for Revenue for Respondent Nos. 1 and 3, G.P., for Municipal Admn. and Urban Development, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioner was elected as chair-person of the Kagaznagar Municipality, Adilabad District on 24.09.2005 and assumed the office on 30.09.2005. The Municipal Council comprises of 28 members. 20 members of the council submitted a requisition dated 03.10.2009 expressing want of confidence in the petitioner and submitted the same to the District Collector, Adilabad, 1st respondent herein. Thereafter, the Sub-Collector, Asifabad, 3rd respondent herein issued notice dated 07.10.2009 proposing to convene the meeting of the Municipal Council on 27.10.2009 to consider the motion of confidence against the petitioner. The same is challenged in this writ petition.

2. Learned Counsel for the petitioner submits that the impugned notice dated 07.10.2009 does not accord with Section 46 of the A.P. Municipalities Act (for short "the Act"). It is pleaded that the Act confers power upon the 1st respondent to fix the date of meeting to take up the motion of no confidence as well as to issue notice there for, whereas the notice was issued by the 3rd respondent.

3. Learned Government Pleader for Municipal Administration on the other hand

submits that Section 46 of the Act empowers the District Collector to appoint the Sub Collector to preside over the meeting and in that view of the matter, no exception can be taken to the impugned notice.

4. Section 46 of the Act prescribes the procedure to be followed in the matter of tabling the motion of no confidence against chairman or vice-chairman of a Municipality. The notice proposing to move the motion of no confidence is required to be given by not less than half of the total membership of the council and it is to be delivered to the District Collector. Sub-section (2) of Section 46 of the Act assumes significance in this regard. It reads as under:

46(2) The District collector shall, then convene a meeting for the consideration of the motion at the office of Municipal Council on the date appointed by him which shall not be later than thirty days from the date on which the notice under Sub-section (1) was delivered to him. He shall give to the members, chairperson or Vice-chairperson as the case may and the Ex-Officio members 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 such form as may be prescribed by the Government and such notice shall be delivered as may be specified.

Explanation: In computing the period of thirty days specified in this sub-section, the period during which a stay order, if any, issued by a competent Court on a petition filed against a notice under Sub-section (1) is in force shall be excluded.

5. From this it is evident that the District Collector is conferred with specific power (a) to appoint the date for convening meeting, which in turn shall not be later than 30 days from the date on which the notice was delivered to him; and (b) to give notice of not less than 15 clear days of the proposed meeting, to the members, chair-person or vice chair-person as the case may be and ex-officio members. Sub-section (3) of Section 46 of the Act provides for the manner of convening the meeting. It can be presided either by the District Collector himself or by the Revenue Divisional Officer, in case he is delegated that power.

6. It is stated that the 1st respondent delegated the power to preside over the meeting to the 3rd respondent. To this extent, there cannot be any grievance to the petitioner. However, the 3rd respondent has chosen to issue the notice. This is without jurisdiction. Sub-section (2) of Section 46 of the Act is clear in its purport. It is the District Collector alone, that can issue notice, and the one issued by the 3rd respondent cannot be sustained in law.

7. On this short ground, the writ petition is allowed and the impugned notice is set aside. It is however made clear that it shall be open to the 1st respondent to issue notice as contemplated u/s 46(2) of the Act; and as and when the meeting is convened, it can be presided over by the 3rd respondent. The District Collector shall complete the process of issuance of notice within one (1) week from today. There shall be no order as to costs.