
(2022) 04 TEL CK 0056
In the Telangana High Court
Case No : Writ Appeal No. 438 Of 2021

T. Raju Yadav

APPELLANT

Vs

Sundara Pandian Kalidasan

RESPONDENT

Date of Decision : 13-04-2022

Acts Referred:

Telangana Panchayat Raj Act, 2018 — Section 30, 30(1)
Andhra Pradesh Panchayat Raj Act, 1994 — Section 245

Citation : (2022) 04 TEL CK 0056

Hon'ble Judges : Satish Chandra Sharma, CJ; Abhinand Kumar Shavili, J

Bench : Division Bench

Advocate : K Pradeep Reddy

Final Decision : Allowed

Judgement

The present appeal is arising out of order dated 24.06.2021, passed by the learned Single Judge, in W.P.No.12704 of 2021 (Sri Sundara Pandian Kalidasan v.

The State of Telangana, rep. by its Prl. Secretary, Panchayat Rj & Rural Development Dept., Hyderabad and others).

The facts of the case reveal that the writ petitioner (respondent No.1 herein), came up before this Court being aggrieved by notice dated 26.05.2021 issued by respondent No.4- Revenue Divisional Officer, Toopran, under the provisions of the Telangana Panchayat Raj Act, 2018 (for short 'the 2018 Act), stating that in respect of No Confidence Motion under Form-I dated 25.05.2021, from the ward members of Kallakal Gram Panchayat, a meeting is scheduled on 15.06.2021.

The facts of the case further reveal that earlier also, a No Confidence Motion was moved against the writ petitioner on 19.02.2021 and notice dated 27.02.2021, was issued under the provisions of the Telangana Panchayat Raj Act, 2018 (for short 'the 2018 Act), which was challenged by the writ petitioner by filing a writ petition being W.P.No.5804 of 2021. However, with the consent of the parties, the learned Single Judge allowed the said writ petition and set aside the notice dated

27.02.2021.

Order dated 28.04.2021, passed by the learned Single Judge, in W.P.No.5804 of 2021 is reproduced as under:

"It is the case of the petitioner that the respondents have issued notice vide No.H/188/2021 under Form-IV dated 27.02.2021 under Section 30(1) of T.S.Panchayat Raj Act, 2018 basing on the alleged notice of Form-I for 'no confidence motion' dated 19.02.2021 moved against the petitioner to call for a meeting on 17.03.2021 at 11.30 A.M. at kallakal grampanchayat to consider the proposal of 'no confidence motion' but the said notice is in gross violation of the rules relating to 'no confidence motion' and seeks to set aside the said proceedings.

During the course of arguments, it is agreed by both sides that the said proceedings are not in consonance with the provisions of the Act and the same are liable to be set aside.

Recording the said submission, this Writ Petition is allowed setting aside the impugned proceedings vide notice No.H/188/2021 under Form-IV dated 27.02.2021 under Section 30(1) of T.S.Panchayat Raj Act, 2018. However, liberty is given to the respondents that even if they are so advised, they shall proceed to take steps in accordance with law."

The aforesaid order makes it very clear that it was agreed by both sides that the proceedings dated 27.02.2021 are not in consonance with the provision of the 2018 Act and they are liable to be set aside with a liberty to the proceed ahead in accordance with law.

Keeping in view the aforesaid order passed by the learned Single Judge, a fresh notice was issued in the matter.

Aggrieved thereby, the writ petitioner filed W.P.No.12704 of 2021, by taking shelter of Section 30 of the 2018 Act and stating that no such notice should have been issued against him before expiry of two years from the date of issue of the first No Confidence Motion. The learned Single Judge has allowed the said writ petition by treating the second notice dated 26.05.2021 as a notice of No Confidence Motion.

The learned Single Judge has placed reliance upon a judgment delivered by a Division Bench of this Court in Torlakoda Mangamma v. The Government of Andhra Pradesh 2011(4) ALD 123.

This Court has carefully gone through the judgment delivered by the Division Bench in the aforesaid case. In the said case, a third notice of No Confidence Motion was in question and Section 245 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short 'the 1994 Act'), was taken into consideration by the Division Bench.

Section 245 of the 1994 Act is reproduced as under:

"Motion of no confidence in Upa-sarpanch, President or Chairperson :--

(1) A motion expressing want of confidence in the Upa-sarpanch or President or Vice-president or Chairperson or Vice-Chairperson may be made by giving a written notice of intention to move the motion in such form and to such authority as may be prescribed, signed by not less than one-half of the total number of members of Mandal Praja Parishad or as the case may be the Zilla Praja Parishad and further action on such notice shall be taken in accordance with the procedure prescribed :

Provided that no notice of motion under this section shall be made within two years of the date of assumption of office by the person against whom the motion is sought to be moved;

Provided further that no such notice shall be made against the same person more than once during his term of office.

Explanation :--

For the removal of doubts, it is hereby declared that for the purpose of this section the expression "total number of members" means, all the members who are entitled to vote in the election to the office concerned inclusive of the Sarpanch, President or Chairperson but irrespective of any vacancy existing in the office of such members at the time of meeting:

Provided that a suspended office-bearer or member shall also be taken into consideration for computing the total number of members and he shall also be entitled to vote in a meeting held under this section.

(2) If the motion is carried with the support of two thirds of the total number of members in the case of a Upa-Sarpanch, the Commissioner shall and in the case of the President or Vice-President or the Chairperson or Vice-Chairperson, the Government shall by notification remove him from office and the resulting vacancy shall be filled in the same manner as a casual vacancy.

Explanation :--

For the purposes of this section, in the determination of two-thirds of the total number of members, any fraction below 0.5 shall be ignored and any fraction of 0.5 or above shall be taken as one."

The earlier statutory provision of law categorically provided that a No Confidence Motion could have been moved only once during the term of the office of Upa-sarpanch. However, in the present case, the statutory provisions as contained in Section 30 of the 2018 Act are not at all identical.

Section 30 of the 2018 Act is reproduced as under:

"30. Motion of no-confidence in Upa-Sarpanch:-

(1) A motion expressing want of confidence in the Upa-Sarpanch, may be made

by giving a written notice of intention to move the motion in such form and to such authority as may be prescribed, signed by not less than one half of the total number of members of the Gram Panchayat, and further action on such notice shall be taken in accordance with the procedure prescribed:

Provided that no notice of motion under this section shall be made within two years of the date of assumption of office by the Upa-Sarpanch:

Provided further that no such notice shall be made against the same Upa-Sarpanch more than twice during his term of office and the second no-confidence motion shall not be initiated before the expiry of two years from the date of first no-confidence motion.

Explanation:- For the removal of doubt, it is hereby declared that for the purpose of this section the expression "total number of members" means, all the members who are entitled to vote irrespective of any vacancy existing in the office of such members at the time of meeting:

Provided that a suspended office bearer or member shall also be taken into consideration for computing the total number of members and he shall also be entitled to vote in a meeting held under this section.

(2) If the motion is carried with the support of atleast one half of the total number of members, the District Collector shall by notification remove him from office and the resulting vacancy shall be filled in the same manner as a casual vacancy.

Explanation:- For the purpose of this section, in the determination of one half of the total number of members, any fraction below 0.5 shall be ignored and any fraction of 0.5 or above shall be taken as one."

The aforesaid statutory provision of law makes it very clear that No Confidence Motion can be initiated against Upa-sarpanch twice during his term of office. However, there has to be a gap of two years between the dates of first No Confidence Motion and the second No Confidence Motion.

The moot question involved in the present case is, whether the first No Confidence Motion, which was set aside by this Court with a liberty to issue a fresh No Confidence Motion, has to be treated as the first No Confidence Motion or not.

In the earlier round of litigation in W.P.No.5804 of 2021, all the parties agreed that the proceedings dated 27.02.2021 are not in consonance with the provisions of the 2018 Act and are liable to be set aside meaning thereby, the respondents in the present case and the earlier case had accepted that the first notice dated 27.02.2021 was not in consonance with the statutory provisions. When the notice was not in consonance with the statutory provisions, it cannot be construed as the first notice as held by the learned Single Judge. Otherwise also, a liberty was granted to the respondents therein to proceed ahead in accordance

with law and they have certainly proceeded ahead in accordance with law.

In the light of the aforesaid, this Court is of the opinion that the impugned order dated 24.06.2021, passed by the Single Judge in W.P.No.12704 of 2021, deserves to be set aside and the same is, accordingly, set aside.

Writ Appeal is allowed.

No costs.

As a sequel, miscellaneous petitions, pending if any, stand closed.