

(1997) 12 AP CK 0004

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 30605 and 32005 of 1997

T. Rama Krishna and Another

APPELLANT

Vs

Commissioner and Director of Municipal Administration and
Others

RESPONDENT

Date of Decision : 18-12-1997

Acts Referred:

Andhra Pradesh Municipalities Act, 1965 — Section 21A, 25, 26A, 326, 4

Citation : (1998) 1 ALT 488

Hon'ble Judges : V. Rajagopala Reddy, J

Bench : Single Bench

Advocate : K. Chidambaram, for the Appellant; G.P. for Respondent Nos. 1 to 4 and V. Venkataramana, for the Respondent

Final Decision : Allowed

Judgement

V. Rajagopala Reddy, J.—A question of general importance arises in these writ petitions. It is, whether the elections to the office of Vice-Chairperson of a Nagar Panchayat (III Grade Municipality) can be allowed to be conducted, when the office of Chairperson is vacant, under the provisions of A.P. Municipalities Act, 1965, (for short, "the Act").

2. The following facts have to be noticed to consider the above question: W.P. No. 30605/97:

The petitioner was elected as Ward Member, 13th Ward of Kovvur Municipality, (Nagara Panchayat) in the election hold in March, 1995. The office of Chairperson of that Municipality was reserved to Schedule Caste Community. The petitioner belongs to S.C. community. One Y. Aseervadham has been elected as Chairperson in the election held in March, 1995. But in January, 1997 he passed away. Hence, the office of Chairperson fell vacant. Under the provisions of the Act the Vice-Chairperson has to perform the functions of Chairperson, pending election of the Chairperson. Election to the office of Chairperson has not been

held, though the post fell vacant in January, 1997. No steps were taken for conducting the elections. u/s 21-A of the Act, election of the Chairperson can be postponed only by an order, in writing to such a period, not beyond one year. By 12-1-1998 the period of one year would be coming to an end. Meanwhile, the Vice-Chairperson Sri Mutyalarao, was removed from office by passing no-confidence motion against him on 12-11-1997. Thus, from 12-11-1997 the office of Vice-Chairperson also fell vacant. Hence the offices of Chairperson and Vice-Chairperson have become vacant. The Revenue Divisional Officer, the 4th respondent, has issued the impugned notice dt. 15-11-1997 for conducting election of Vice-Chairperson on 21-11-1997. The petitioner filed the writ petition questioning the conduct of the election of Vice-Chairperson without conducting the election to the office of Chairperson, which was also vacant much prior to the office of Vice-Chairperson.

W.P. No. 32005/97:- This writ petition was filed by one George seeking issue of writ of Mandamus declaring the meeting of Kovvur Municipality, presided over by the R.D.O. on 21-11-97 to elect Vice-Chairperson of the Municipality, as illegal as being contrary to A.P. Municipalities (Conduct of Election of Vice-Chairperson) Rules, 1986 and to set aside the election held in the said meeting.

3. Thus in the above two writ petitions the same question arises as to the legality of the election to the office of Vice-Chairperson, when the office of Chairperson was also vacant without any steps being taken for holding election to Chairperson.

4. Learned Counsel for the petitioners strenuously contends that Section 26-A of the Act mandates for holding election to the office of Chairperson immediately on the occurrence of such vacancy and the said election could have only been postponed, for good reasons, for a period not beyond one year which period, in the instant case, has been expiring by 12-1-1998. Hence the notice of holding election of Vice-Chairperson, which office fell vacant only recently, is contrary to the provisions of the Act and the Rules. It was further contended that the Chairperson having been empowered u/s 17 (sic. 47) of the Act to hold the election to the office of Vice-Chairperson, the election of Vice-Chairperson in the absence of Chairperson is illegal. It is also contended that the impugned notice is vitiated as the R.D.O. has no power under the Act and the Rules to hold election of Vice-Chairperson.

5. Sri Venkataramana, learned Counsel for the 5th respondent however, submits that holding of election of Vice-Chairperson does not offend any provisions of the Act or Rules and in fact as per Rules the election to the office of Vice-Chairperson has to be conducted in a time bound schedule and it cannot be postponed to hold the election of Chairperson.

6. To appreciate the above contentions, it is necessary to notice some of the provisions of the Act and the Rules: Chapter-II of Part II of the Act deals with the constitution and appointment of Municipal authorities who were charged with

carrying out the provisions of the Act. Section 4 enumerates the said authorities and they are - (a) the Council, (b) the Chairperson, (c) the Commissioner and (d) the Wards Committee. The Municipal Council which has authority over the municipal administration, comprises of members elected in accordance with the Act and the Rules and the Member of Legislative Assembly, Member of Parliament and other co-opted Members. Part (b) of Chapter-II deals with the election of Chairperson and Vice-Chairperson. Section 23 provides procedure for the election of Chairperson, who shall be elected directly by the people whose names appear in the electoral roll for the Municipality and his tenure of office is 5 years. Reservation to SC, ST, BC and Women is provided under the Act. As per Sub-section (4) of Section 23 any casual vacancy in the office of Chairperson shall be filled at a casual election and the person elected as Chairperson shall enter into office forthwith. It is also made clear that the Chairperson shall have all the powers and privileges of an elected member of the Municipality and he is entitled to vote at all meetings of the Council. As per Section 25 of the Act the Vice-Chairperson shall be elected by the members of the Council within 15 days from the date of election of the Chairperson. Section 26A is an important provision for our purpose. It deals with the situation when the office of Chairperson was vacant. As per the said provision, when the office of Chairperson falls vacant, the Vice-Chairperson shall perform the functions of the Chairperson until a new Chairperson was elected. The Commissioner shall, immediately on the occurrence of such vacancy, intimate the fact to the Election authority and the Election authority shall arrange the election of Chairperson. Sub-section (2) of Section 26A provides for a situation when the office of Chairperson falls vacant and the office of Vice-Chairperson also was vacant. Then the District Collector or the Revenue Divisional Officer shall, notwithstanding anything in the Act or the Rules and the notification issued thereunder, exercise the powers and perform the functions of the Chairperson, until a new Chairperson or Vice-Chairperson was elected.

7. A.P. Municipalities (Conduct of Election of Vice-Chairperson) Rules, 1986, framed in exercise of powers u/s 25 read with Section 326 of the Act, govern the election of Vice-Chairperson. Rule 2 provides for the Commissioner of the Municipality to intimate, immediately after the declaration of results of ordinary election or occurrence of vacancy in the office of Vice-Chairperson, to the Election authority about such vacancy and on receipt of such intimation, the Election authority shall transfer the same to the Chairperson requesting him to conduct the election. Explanation to Rule 2 says that the Election authority is the Commissioner in the case of ordinary elections and the Director of Municipal Administration in respect of casual election. Under Rule 3, the Chairperson shall convene a special meeting of the Council for the election of Vice-Chairperson within 15 days from the date of his election. However, in the absence of Chairperson, the Special Officer was empowered to issue notices under Rule 3. Such a meeting shall be presided over by the Chairperson or in his absence by a Member of the Council, vide Rule 4.

8. A review of the above provisions appears to clearly indicate that the office of Chairperson is an important authority in the administration of the municipality. u/s 4, which enumerates Municipal authorities, Chairperson is shown as one of the authorities, apart from the Council, the Commissioner and the Wards Committee. He was elected directly by the electors in the municipality and is invested with all rights and privileges of an elected member of the Municipality and is entitled to vote in all the meetings of the Council. The office of Vice-Chairperson, however, was not given that important functions in the administration. He was elected by the members of the Council. His election shall be held within 15 days from the election of the Chairperson or immediately on the occurrence of any casual vacancy in the office of Vice-Chairperson. In this context the question as to the holding of election of Vice-Chairperson when the vacancy of Chairperson has been lying vacant for quite some time, has to be considered. The facts reveal, that vacancy of Chairperson arose on the death of the previous incumbent in January, 1997. No steps were taken to fill up the vacancy. By virtue of Section 26-A of the Act, Vice-Chairperson was carrying on the functions of the Chairperson. Since the office of Vice-Chairperson also fell vacant, in view of Sub-section (2) of Section 26-A, the R.D.O. was exercising the powers of the Chairperson till the elections to the office of Chairperson or Vice-Chairperson were held. It is plain from the language of Section 26-A that immediately on the occurrence of the vacancy of Chairperson it was the duty of the Commissioner to intimate the fact to the Election authority and the Election authority shall immediately arrange election of Chairperson. u/s 21-A though it is lawful for the Government to postpone the election of the Chairperson, but such postponement shall be lawful only if an order is passed by the Government assigning reasons for such postponement. The petitioner made the State Government, State Election Commissioner, Commissioner and Director of Municipal Administration and the Revenue Divisional Officer, Kovvur as respondents. But none filed counter-affidavit or advanced any arguments, or produced any order purported to have been passed u/s 21-A of the Act. Thus, the Commissioner and the Election Authority have committed violation of the mandate given u/s 26-A of the Act, in not holding the election of Chairperson immediately on the occurrence of such vacancy. It is the contention of the learned Counsel for the petitioner that the election of Chairperson was postponed only for the reason to deprive the election of S.C. candidate as Chairperson and to allow the Vice-Chairperson, who belongs to other community, to act as Chairperson. Thus, the Vice-Chairperson was successfully allowed to act as Chairperson from January, 1997 till he was removed from office in November, 1997. In the absence of any rebuttal of any allegations made by the petitioner and also in the absence of any reasons forthcoming for postponement of the election of Chairperson, though it was mandated u/s 26-A of the Act to hold the election immediately after the occurrence of the vacancy, the allegations made by the petitioners appear to be justified.

9. Relying upon Section 25 of the Act and Rule 3, it is contended by the learned

counsel for the 5th respondent that as the election of Vice-Chairperson was time-bound and should be held within 15 days from the date of occurrence of its vacancy, the impugned notice for the election of Vice-Chairperson is in accordance with the provisions of the Act and the rules. The contention is wholly untenable. Section 25 pre-supposes the election of Vice-Chairperson after the Chairperson was elected. The Act is silent with regard to the election of Vice-Chairperson in the event of occurrence of vacancy of Vice-Chairperson subsequent to the ordinary election. The Rules for the election of Vice-Chairperson are framed u/s 25 of the Act read with Section 326. Section 25 speaks of the election of Vice-Chairperson as prescribed in the Rules. As per the Rules, it is the Commissioner who should intimate to the Election Authority, who in turn requests the Chairperson to conduct the election. Thus, the Chairperson is the authority to conduct the election under the Rules, i.e., to convene the meeting, issue notices to the members and presides over the special meeting to conduct election of Vice-Chairperson. As seen supra Section 26-A of the Act mandates to hold the election of Chairperson immediately on the occurrence of such vacancy. Thus immediate steps should be taken to arrange for the election of Chairperson. It cannot therefore, be said that the election of Chairperson is not time bound. Rule 2 (sic. 3) proviso only empowers the Special Officer to issue notice under Rule 2 (sic. 3), in the absence of Chairperson. But he has no power to convene the meeting or to preside over the meeting in the absence of Chairperson, as Rule 4 clearly says that in the absence of Chairperson only a Member should preside over the meeting. The vacancy of Chairperson contemplated in proviso to Rule 2 (sic. 3) and in Rule 4 appears to be in the event of sudden death of Chairperson or when the Chairperson has not entered the office after he was elected or in any other similar event. In all other cases the Chairperson has to conduct the election. In view of the plain language of Section 26-A and Section 21-A of the Act, I am of the view that the Council cannot brook any delay in conducting election of Chairperson. Otherwise, a situation would develop when the Vice-Chairperson would be acting as Chairperson without holding election of Chairperson till the expiry of entire remaining term. It should be remembered that the Chairperson is elected directly by all the electors of the Municipality and the Vice-Chairperson having been elected by members of the Municipality cannot be allowed to perform the functions of the Chairperson for a long time. The Chairperson is also one of the important authorities in the municipality as enumerated in Section 4 of the Act, whereas the Vice-Chairperson has not been given any such importance in the administration of the municipality. The election of Vice-Chairperson thus cannot get precedence over that of the Chairperson. This position is also evident from the scheme of the Act. It is, however, possible in a given situation that the election of Vice-Chairperson can be held when there is vacancy of office of Chairperson. But such a situation should be avoided in all cases, since the Chairperson has to conduct the meeting for the election of Vice-Chairperson and the Chairperson being an important authority in the municipality, his election should be given preference. I am therefore of the view that ordinarily the

election of Vice-Chairperson cannot be conducted when the office of Chairperson is vacant. It would be wholly contrary to the Act and the rules. Even in case when, for good reasons, the election of Chairperson was postponed as contemplated u/s 21-A of the Act, the election of Vice-Chairperson can be held, but such a meeting shall be presided over by a Member. Hence, the impugned notice issued by R.D.O. to conduct the election of Vice-Chairperson is wholly contrary to the provisions of the Act and the Rules and is liable to be set aside.

10. The election notice also appears to have not been issued in accordance with Rule 2, which provides for the Commissioner to intimate the fact of vacancy to the Election Authority and on receipt of such intimation, the Election Authority shall intimate the same to the Chairperson with a request to conduct election of Vice-Chairperson. The Explanation to Rule 2 makes it clear that the Director of Municipal Administration is the Election Authority to conduct the casual election to the office of Vice-Chairperson. The Commissioner, in the instant case, has not shown to have intimated the fact to the Director of Municipal Administration, to hold the election. In the absence of such authorisation given by the Election Authority to hold the election, the impugned notice would be vitiated. In view of this finding, I am not inclined to go into the question whether the R.D.O. is competent to issue the notice or the Special Officer, as provided in proviso to Rule 3.

11. It is also necessary to notice that the one year period from the date the vacancy arose in the office of Chairperson would expire by 12-1-1998 and as per Section 21-A the Government cannot postpone the election of the Chairperson exceeding one year. Hence, the Government ought to have conducted the election of Chairperson as the vacancy arose on 12-1-1997. The vacancy in the office of Vice-Chairperson arose only in November, 1997 and I do not find any good reason in holding election of Vice-Chairperson in such a haste without holding the election of Chairperson.

12. It is stated that in pursuance of the impugned notice, election to the office of Vice-Chairperson was held on 21-11-1997, but in view of the order of this Court the declaration of the results was withheld.

13. For the foregoing reasons the writ petitions are allowed. The impugned notice and the elections held pursuant thereto, are quashed. The Commissioner of the Municipality shall intimate the fact of vacancy of Chairperson to the Election Authority, who in turn shall arrange the election of the Chairperson forthwith, in accordance with the Act and the Rules. This exercise shall be completed before 15-2-98.