

(1990) 07 KAR CK 0053
In the Karnataka High Court
Case No : W.P. No. 14478/1990

Venkata Rao Mukunda Rao Sarekar

APPELLANT

Vs

Assistant Commissioner, Bidar and Others

RESPONDENT

Date of Decision : 09-07-1990

Acts Referred:

Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 — Section 47(2)

Citation : (1991) 1 KarLJ 109

Hon'ble Judges : N. Y. Hanumanthappa, J

Judgement

Hanumanthappa, J.-Government Advocate is directed to take notice. The Janavada Mandal Panchayat of Bidar Taluk, consists of 40 members. Petitioner is the Pradhan of the said Mandal Panchayat. Earlier in the month of September 1989 members of the Mandal Panchayath gave a requisition under section 43 of the Zilla Parishad Taluk Panchayat Samithi Mandal Panchayat and Nyaya Panchayat Act, 1983 (in short Act) to convene a meeting to consider whether the petitioner-the Pradhan of the Mandal Panchayat has the confence of majority members to continue as pradhan or not. For want of quorum the subject a stated for consideration on 20th September 1989 was postponed to 19th October 1989. During that meeting also the subject was not considered for want of Quorum. Thus the subject matter was went on postponing. The first Respondent on the basis of subsequent request issued a notice convene the meeting on 10-7-1990 the members of the Mandal Panchayat to consider vote of no confidence against petitioner to continue as Pradhan of the Mandal. This is the notice dated 19-6-90 is now under challenge in this Writ Petition by the petitioner. The attack to the said notice is that (1) The Mandal Panchayat consists of 40 members out of which 20 are infavour and 20 are opposing the requisition that was sent earlier under Section 47(2) of the Act, (ii) Notice issued is not a valid one as the same not inaccordance with the provisions of the Act and the Rules. According to the petitioner that initially the notice sent to the Assistant Commissioner shown as if sent by 20 members but subsequently it made out that 7 members did not

subscribe their signature to the notice that was submitted to the Assistant Commissioner, (iii) Annexures, "D", "E" & "F" disclose intention of 7 members and the Form No. 1 sent a defective one. (iv) Under Section 47(2) of the Act, according to the petitioner, merely sending a notice is not sufficient. Accordingly to him it is mandatory to enclose to such a notice a draft resolution. A copy of the proposed motion shall be delivered in person by two members who are signatories to such notice since these things are absent the petitioners contends that the meeting that is now proposed to be held on 10-7-1990 deserves to be quashed.

Smt. Nimmy Swamy, learned High Court Government Pleader submitted that the Writ Petition is not maintainable. (1) As against the meeting, notice is issued, the petitioner can challenge the same before some other forum. Secondly, she submits that the second contention namely enclosing a copy of the proposed motion and delivery of the same to the Assistant Commissioner by two signatories is not mandatory. According to her all the contentions raised by the petition have no merits.

Learned Counsel for the petitioner Sri. S.P. Shankar, laid stress on his submission that there is no semblance of application of mind by the Assistant Commissioner to Section 47(2) of the Act in that none of the signatories of the requisition have mentioned that they want to decide whether they have confidence in petitioner continuing as pradhan or otherwise. According to him that what they have stated in the notice is only, to remove the petitioner from the office of pradhan. As such according to him it is not a notice in accordance with law.

After going through the impugned notice issued under Rule 4 of conduct Election of pradhan & upapradhan Rules, Form No. 1 and 2 as prescribed and after considering carefully the contentions raised by both the sides in support of their case, I am of the opinion, that no illegality or irregularity has been committed by the Assistant Commissioner is issuing notice of meeting for the following reasons.

(1) It is not in dispute that 20 members are on the petitioner's side whereas other 20 members are on other side. If really out of 20 persons who opposed the petitioner earlier as seven did not subscribe their signatures to the earlier intention or notice given to the Assistant Commissioner even now it is left open to the petitioner to demonstrate that the meeting to be held on 11-7-1990 as not a valid one.

(2) The seven persons who have resited from the notice issued earlier is a fact the petitioner can make use of them to defeat the motion.

(3) The contention of the petitioner is that as per Section 47(2) of the Act, it is mandatory on the part of the signatories to deliver a copy of the proposed motion to the Assistant Commissioner by two signatories. Section 47 sub section (2) contemplates two circumstances: (1) more than 50% of the members of the Mandal Panchayat to submit their application in the form prescribed in From No. I. That Form No. I prescribed as per Rule 3 of the Rules reads as follows: Note:

(Page. 428) Extract Form No 1. The form 1 given by the signatories reads as follows:

"Motion of No-confidence against Pradhan/Upapradhana of Janavada Mandate Panchayat We, the following members hereby give notice of our intention to move that Sri. Venkata Rao Mukunda Rao Sarekar Pradhana/Upapradhana of Janavada Mandal Panchayat shall be removed from the office of Pradhana/Upapradhana".

A reading of Form-I to be submitted by members indicates that all that they have to do is to inform that the Pradhan or Upapradhana shall be removed from the office and nowhere it is stated either in the Rules or in Form prescribed it shall be mentioned in the notice that they have no confidence in the pradhan or Upapradhan and the subject relating to such vote of no confidence be considered.

The second contention that a copy of the proposed motion shall be delivered in person to two signatories to the resolution to the Assistant Commissioner. This according to Sri. S.P. Shankar, learned Counsel for the petitioner is mandatory. I am unable to accept this contention because a reading of Section 47 (2) makes it clear that in addition to sending a notice all that has to be mentioned is that they want to remove the Pradhan or Upapradhan. Requirement of Section 47 (2) is to be understood as complied with if two signatories to the notice personally delivered the notice to the Assistant Commissioner and not by all the signatories, and it is mentioned in the notice that they want to remove the Pradhan or Upapradhan. Hence, the argument of the learned Counsel for the petitioner that the Annexure-"F" is a forged one merely because it contains some over writings on the dates mentioned, is without basis. When malafides against the Assistant Commissioner are not proved it is incorrect to say that the Assistant Commissioner has issued the present notice with a view to harass the petitioner. No doubt, the meetings convened earlier were postponed several times. But that does not mean the signatories lost the right to request the concerned authority to reconsider the said subject afresh that too in the absence lapse of the earlier motion;

The contention of the petitioner's Advocate that the notice sent in Form No 1 is not a valid one as Second part-1 of 47 (2) of the Act prescribes that a requisition shall be submitted in Form No. 1. Whereas out of 20, seven members have withdrawn. Thus the notice fell short of 1/2 of the total members of the Mandal Panchayath. On these contentions he submits that the meeting of the Mandal Panchayat to be held as illegal.

It is not in dispute seven signatories wrote a letter to the Assistant Commissioner on or about 3-7-1990 that they did not receive notice. In fact Annexure-B, letter addressed by one of the signatories to the Assistant Commissioner clearly stated that he is in receipt of notice dated 19-6-1990. Other six persons who are signatories to Annexure-F, when aware of the foul play by others in forging their signatures, nothing prevented them either to approach the Court or to give

complaint to authority or the respondent 1 requesting that no action be taken on the basis of the earlier notice. Silence of these seven members clearly establishes that it is nothing but a trick played by the petitioners to circumvent the notice or to escape from facing the meeting. Further, the allegation that signatures of seven members have been obtained on a blank papers by the opponents of the petitioner and made use of the same with a view to request the respondents to convene a meeting, is a question of fact which has to be decided after holding a regular enquiry by the concerned authority and the same can't be a subject matter of this writ petition. For the reasons given above, I am of the opinion that there are no merits in the contentions of the petitioner.

Hence, this writ petition is dismissed. There is no order as to costs. However, the petitioner is at liberty to take up all these contentions at the time of moving the motion at 11-7-1990 or any other day, or before any other forum to establish his case.

Smt. Nimmy Swamy, learned High Court Government Pleader, is permitted to file memo of appearance within 4 weeks.

Writ petition dismissed.