

(1980) 04 KAR CK 0010
In the Karnataka High Court
Case No : WP 3857/80

Vittal Thippanna

APPELLANT

Vs

Secy. Devalghangapur Village Panchayat and Others

RESPONDENT

Date of Decision : 21-04-1980

Acts Referred:

Constitution of India, 1950 — Article 226

Karnataka Village Panchayat and Local Boards Act, 1959 — Section 32(1)

Citation : (1980) 2 KarLJ 63

Hon'ble Judges : Swami, J

Judgement

1. In this petition under Art. 226 of the Constitution the petitioner has challenged the validity of the no confidence motion passed against him on 20-2-1980 by the members of the Village Panchayat Committee, Devalghangapur, Gulbarga District. The petitioner was elected as Chairman of the aforesaid Village Panchayat Committee. On 23-1-1980, the required number of members of the Village Panchayat Committee gave notice of a motion of no-confidence under Rule 2 of the "No confidence Motion against the Chairman and Vice Chairman of a Panchayat (Procedure) Rules, 1959" (hereinafter referred to as the Rules) read with S. 32 (1) of the Karnataka Village Panchayats and Local Boards Act, 1959 (hereinafter referred to as the Act) intending to move the motion of no confidence against the petitioner. This notice which was addressed to the Secretary of the Village Panchayat Committee was also served upon the petitioner on the 23rd of January, 1980 itself. Thereafter, on the 24th January, 1980, it is revealed from the records produced before the Court, the Secretary has reported the matter to the Chief Executive Officer of the Taluk Development Board, who in turn by the communication dated 25-1-1980 informed the Secretary of the Village Panchayat Committee to hand over a copy of the notice to the Sarpanch and to proceed with the matter in accordance with Rules 5, 6, 7 and 8 of the Rules. At this stage itself it may be noticed that Rule 5 of the Rules was omitted by the notification bearing No. DR 28 REP 62 dated 3-9-1963 issued by the State Government. In pursuance of the said communication, the

Secretary of the Village Panchayat Committee issued the notice dated 13-2-1980 calling for a meeting of the Panchayat Committee on 20-2-1980 at 3 P.M. for the purpose of discussing the motion of no-confidence against the petitioner. Accordingly, on 20-2-1980, the Panchayat Committee met and passed a resolution with 2/3rd majority expressing no-confidence in the petitioner.

2. It was contended on behalf of the petitioner that calling of the meeting by the Secretary of the Village Panchayat Committee by issuing the notice dated 13-2-1980 was unauthorised and as such, the meeting of the Panchayat Committee which took place on the 20-2-1980 in pursuance of the aforesaid unauthorised notice was also illegal and the resolution expressing no confidence passed against the petitioner in such a meeting cannot be said to be a valid one.

3. On the contrary, Sri Shivaraj Patil, the learned Counsel appearing for, the additional respondents and also Sri Nataraj, the learned High Court Government Pleader, appearing for the official respondents submitted that the petitioner has got a remedy by way of an appeal to the Deputy Commissioner against the resolution of no confidence passed by the Village Panchayat Committee, therefore, this is not a matter in which the jurisdiction under Art. 226 of the Constitution is required to be exercised. It was also contended on behalf of the respondents that in view of the provisions contained in S. 41 of the Act, the defect if any in issuing the notice calling for the meeting of the Village Panchayat Committee can be said to have been cured, as such, the resolution of no-confidence passed by the required number of members of the Village Panchayat Committee cannot be invalidated on that ground. Shri Shivaraj Patil lastly contended that the Chairman of the Village Panchayat Committee having attended the meeting of the Village Panchayat Committee in which the motion of no-confidence was passed and also having signed, the proceeding of the Panchayat Committee he must be deemed to have acquiesced in the proceeding of the Village Panchayat Committee, therefore, he cannot now turn round and say that the meeting was unauthorised and as such the proceeding of the meeting was also invalid. In other words, it was contended that the petitioner was estopped from contending to the above effect.

4. Section 32(1) of the Act reads as follows:

"32. Motion of no-confidence:

(1) A motion of no confidence may be moved by any member against the Chairman or the Vice-Chairman after giving such notice as may be prescribed and such notice shall be supported by not less than one-third of the total number of members of the Panchayat. If a meeting for consideration of the motion is not convened by the Chairman within thirty days from the date of notice, the Chief Executive Officer of the Taluk Board shall himself convene the meeting."

From the provisions contained in Sec. 32(1) of the Act, it is clear that it is open for the Chairman to call on any day the meeting of the Village Panchayat

Committee within 30 days from the date of service of notice of a motion of no-confidence as contemplated under Rule 2 of the Rules read with Section 32(1) of the Act, If the Chairman fails to call the meeting within 30 days for the purpose of consideration of the motion of no-confidence, then the Chief Executive Officer of the Taluk Development Board gets an authority to call the meeting of the Panchayat Committee for that purpose. In the instant case, it is not in dispute that the notice as contemplated under Rule 2 of the Rules was served on the petitioner on 23-1-1980. Thus, the petitioner had time till the expiry of 30 days to call a meeting of the Panchayat Committee to consider the motion of no-confidence proposed to be moved against him. But, on 13-2-1980 itself, the Secretary of the Village Panchayat Committee has issued notice in pursuance of the instructions issued by the Chief Executive Officer as stated in the said notice itself, calling for the meeting of the Panchayat Committee on the 20-2-1980 for consideration of the motion of no-confidence. Thus it is clear that on the 13th February 1980 neither the Secretary of the Panchayat Committee nor the Chief Executive Officer of the Taluk Board could have called the meeting of the Village Panchayat for the purpose of considering the motion of no-confidence because the period for calling the meeting by the Chairman of the Village Panchayat Committee had not yet expired. It is also not in dispute that the meeting can be called even by issuing the notice of 3 days; therefore, on 13-2-1980, there was sufficient time for the Chairman to call for the meeting of the Panchayat Committee for considering the motion of no-confidence. Thus, the meeting notice issued by the Secretary was wholly without the authority of law as he could not have issued the notice on 13-2-1980 calling for the meeting of the Panchayat Committee. Thus the meeting of the Village Panchayat Committee held in pursuance of the said notice cannot also be said to be a valid one. The object of the enactment in giving 30 days time to the Chairman for calling the meeting of the Panchayat for consideration of the motion of no-confidence is to provide sufficient time to enable the members and the Chairman of the Panchayat to sort out the differences between the members of the Village Panchayat who intend to move the motion of no-confidence on one side and the Chairman and the Vice-Chairman and other members of the Panchayat on the other and to see that as far as possible the Village Panchayat Committee functions as a homogeneous body with least differences among its members which, is necessary for proper functioning of the Village Panchayat Committee. This object will be defeated if the Secretary of the Village Panchayat Committee is to call the meeting of the Panchayat Committee even before the expiry of 30 days from the date of receipt of the motion of no confidence.

5. This Court in the case of *Basappa v. Asst. Commr*, (196) 1 Kar.L.J. 415, has held that in view of the provisions contained in Sec. 32(1) of the Act it is only the Chairman or on the failure of the Chairman the Chief Executive Officer who is competent to convene a meeting for the purpose of consideration of the motion of noconfidence. Thus, at any rate, the Secretary of the Panchayat Committee under any circumstances could not have had the authority to call the meeting of

the Village Panchayat Committee for the purpose of consideration of the motion of no-confidence. If the Chairman had failed to call the meeting within 30 days from the date of service of the notice, it was the Chief Executive Officer who could have called the meeting and not the Secretary of the Village Panchayat Committee. In the instant case neither the Chairman can be said to have failed to call for the meeting, nor the Chief Executive Officer has called for the meeting. On the contrary, even before the expiry of the period of 30 days from the date of service of the notice, the meeting notice has been issued by the Secretary of the Village Panchayat Committee which is wholly without jurisdiction.

6. It is in this back ground, the contention raised by the respondents regarding the alternate remedy is to be considered. It is a settled position of law that there is no legal bar for the exercise of jurisdiction under Art. 226 of the Constitution even in cases where there is an alternate remedy available to the party, but at the same time the availability of an alternate remedy is a relevant circumstance to be taken into consideration for exercising the jurisdiction under Art. 226 of the Constitution which in turn will depend upon the facts and circumstances of each case. Having regard to the facts and circumstances in a particular case the alternate remedy may be considered to be sufficient to refuse to exercise the jurisdiction under Art. 226 of the Constitution and the party may be directed to avail the same. Thus, there cannot be an inflexible rule that the jurisdiction under Art. 226 should not be exercised wherever there is an alternate remedy available to the party. It is apparent from the undisputed facts of the case on hand that the Secretary of the Village Panchayat Committee, had no authority to call the meeting of the Village Panchayat Committee for the purpose of consideration of a motion of no-confidence and the motion of no-confidence was passed against the petitioner in such a meeting which was called for by the Secretary of the Village Panchayat Committee. Thus the entire proceeding, starting from the calling of the meeting culminating in the passing of the motion of no-confidence, was wholly without the authority of law and as such the resolution of no-confidence passed against the petitioner was null and void. In such a situation, in the interest of justice, it will be just and proper to exercise the jurisdiction under Art. 226 of the Constitution instead of directing the party to avail the remedy under S. 200 of the Act. In view of this conclusion, it is not necessary to decide the correctness of the contention of the respondents that S. 200 of the Act provides for an alternate remedy. Consequently, it is not necessary to refer to a decision of this Court in W.P. 3738 of 1980 dated 11-4-1980 relied upon by the respondents.

7. The contortion of Shri Shivaraj Patil that in view of the provisions contained in S. 41 of the Act, the defect if any in issuing notice by the Secretary calling for the meeting of the Village Panchayat Committee can be said to have been cured, cannot also be accepted. S. 41 of the Act reads as follows:

41. Acts of Panchayat, etc. not to be invalidated: "No act of a Panchayat or of any person acting as a member or as a Chairman, Vice-Chairman, Presiding

member or Secretary, shall be deemed to be invalid by reason only of some defect in the constitution or appointment of such Panchayat, Chairman, Vice-Chairman, Presiding member or Secretary or member or on The ground that they or any of them were disqualified for such office or that formal notice of the intention to hold a meeting of a Partchayat was not duly given or by reason of such act having been done during the period of any vacancy in the office of the Chairman, Vice-Chairman, or Secretary or member of such Panchayat, or for any other informality."

From the aforesaid provisions contained in Sec 41 of the Act, it is clear that the same do not cover the illegalities with which we are concerned in the instant case. S. 41 cures only the formal defects which do not affect the merits of the proceeding and the illegalities affecting the merits of the proceeding thereby invalidating the same such as lack of jurisdiction etc. are not covered by the provisions contained in S. 41 of the Act. Therefore, the contention of the learned Counsel for the petitioner that S. 41 of the Act cures the illegality committed by the Secretary in calling the meeting of the Village Panchayat Committee for considering the motion of no-confidence cannot be accepted.

8. The last contention of the learned Counsel for the additional respondents is that the petitioner having participated in the meeting of the Village Panchayat Committee in which the motion of no-confidence was passed against him must be deemed to have acquiesced in the proceeding of the Village Panchayat Committee. When the meeting convened by the Secretary from the very inception is an illegal and unauthorised meeting, the participation of the petitioner does not give any legal tinge to such a meeting and the proceeding of such a meeting cannot be held to be valid. Thus, the resolution in question, being null and void, is inoperative in the eye of law. Therefore, the participation of the petitioner in such a meeting cannot validate either the proceeding or resolution of no confidence. Therefore, the last contention of the learned Counsel cannot also be accepted. The contention of the learned Counsel that the Chairman after having received the notice issued by the Secretary did not protest against such notice, therefore, he must be deemed to have acquiesced in the proceeding of the Village Panchayat Committee cannot also be accepted for the reasons already stated above.

9. For the reasons stated above, this petition is entitled to succeed. Accordingly the same is hereby allowed. The motion of no-confidence passed by the Village Panchayat Committee on 20-2-1980 against the petitioner is hereby quashed.

Sri Nataraj, the High Court Government Pleader, is permitted to file memo of appearance for respondent-2 within four weeks.