

Muniyappa and Another Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Aug-13-1998

Reported in : AIR1998Kant57; 1999(4)KarLJ42

Judge : T.S. Thakur, J.

Acts : [Karnataka Panchayat Raj Act, 1993](#) - Sections 49; Karnataka Panchayat Raj (Motin of No-confidence against Adhyaksha and Upadhyaksha of Grama Panchayat) Rules, 1994 - Rule 3(2); [Constitution of India](#) - Article 226; Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 - Sections 47(3)

Appeal No. : Writ Petition Nos. 31018 and 31019 of 1996

Appellant : Muniyappa and Another

Respondent : State of Karnataka and Others

Advocate for Def. : Sri N.K. Ramesh, Additional Government Advocate and ;Sri K.N. Subba Reddy, Adv.

Advocate for Pet/Ap. : Sri G. Manivannan, Adv.

Judgement :

ORDER

1. Removal of the petitioners from the posts of Adhyaksha and Upadhyaksha of the Grama Panchayat pursuant to a no-confidence motion moved against them has been called in question in these writ petitions. The solitary ground urged is that the meeting of the Grama Panchayat convened to discuss the motion had been held more than 30 days after a notice of the motion was given and was therefore in violation of the provisions of Rule 3(2) of what are known as Karnataka Panchayat Raj (Motion of No-confidence against Adhyaksha and Upadhyaksha of Grama Panchayat) Rules, 1994. Rule 3 no doubt envisages the holding of a meeting of the Grama Panchayat not later than 30 days from the date on which a notice of no-confidence is moved against the Adhyaksha or the Upadhyaksha under sub-rule (1) of the said rule. The petitioners maintain that the said provision is mandatory and a meeting convened more than 30 days after the receipt of the no-confidence motion by the Assistant Commissioner would be illegal rendering any resolution passed in any such meeting legally unsound and inconsequential. Whether or not the provision is mandatory and whether this Court should interfere with the proceedings of the Grama Panchayat in the peculiar facts and circumstances of this case are therefore the only questions that fall for consideration. The contentions urged can be better appreciated, if the facts are stated first:

2. The petitioners were at the material point of time Adhyaksha and Upadhyaksha of Neralur Grama Panchayat. On 7-9-1996 a notice of a no-confidence motion signed by 2/3rd of the members of the Panchayat was lodged with the Assistant Commissioner for their removal. The Assistant Commissioner in turn issued notices to the members of the Grama Panchayat for a discussion on the motion in a meeting of the Panchayat convened on 10-10-1996. A meeting was accordingly held on the date fixed in which the petitioners did not participate. All the same, out of a total of 19 members of the Grama Panchayat, 14 attended the meeting in which 13 voted for the motion while one voted against the same. The motion was therefore carried with 2/3rd of the total strength of the Grama Panchayat voting for the removal of the petitioners who were pursuant to the resolution called upon to deliver the books and the records in their custody to the Secretary of the Panchayat. It is not in dispute that an Administrator was also appointed for the Grama Panchayat pending fresh elections, who remained incharge of the affairs of

the Panchayat during the interregnum. A notice was then issued by the Assistant Commissioner for a fresh election to be held on 15-11-1996. In the said elections, the 6th respondent was elected unopposed as the Adhyaksha of the Panchayat. No election was however conducted for the post of Upadhyaksha. Two days before the holding of this election, the petitioners came up with the present writ petitions challenging the no-confidence proceedings held against them on 10-10-1986 on the ground indicated earlier. By an interim order issued by this Court in these petitions, the announcement of the result of the election insofar as Upadhyaksha's post was concerned alone was stayed. This meant that insofar as the post of Adhyaksha was concerned, the elections, could go on and the person elected could as well assume office. The writ petition was eventually heard by a Single Bench of this Court (L.S. Sreenivasa Reddy, J.) and allowed on 16-1-1997 -- The decision is *M. Muniyappa and Another v State of Karnataka and Others*. This Court held that the provisions contained in Rule 3 of the Rules in question insofar as the same required a meeting of the Panchayat to be held not later than 30 days of the making of the motion was mandatory and any violation of the same rendered the proceedings illegal. Aggrieved by the said decision, the 6th respondent who was the reigning Adhyaksha of the Grama Panchayat filed Writ Appeal Nos. 1518-1640 of 1997 in which apart from other contentions it was urged that the petitioners had secured a judgment in their favour without impleading the said respondent as a party to the proceedings even when they knew that he had been elected as Adhyaksha of the Panchayat after their removal. The appeals succeeded and were allowed by the Division Bench by its order dated 16-4-1997 holding that the petitioners had suppressed material facts and that the writ petition itself was on that ground liable to be dismissed. The writ petition was accordingly dismissed with costs. Aggrieved by the order of the Division Bench, the petitioners filed S.L.P. Nos. 9470-71 of 1997 which were allowed by an order dated 13-2-1998 with the agreement of the parties. The Apex Court directed the writ petition itself to be restored and heard again by this Court. The orders passed earlier were set aside. On remand, the writ petition was allowed once again by a Single Judge of this Court (Chandrashekaraiah, J.) by order dated 5-6-1998. This order was also challenged in an appeal by the 6th respondent and was set aside by the Division Bench by its order dated 24-6-1998 with the direction that the matter shall

be heard and disposed of afresh. That is precisely how the present writ petition has come up for hearing before me third time in a row.

3. Counsel appearing for the petitioners strenuously argued that Rule 3 of the Karnataka Panchayat Raj (Motion of no-confidence against Adhyaksha and Upadhyaksha of Grama Panchayat) Rules, 1994 was a mandatory provision of law and any violation thereof would render the no-confidence proceedings illegal. He urged that Rule 3 was similar to the provision which was considered by the Full Bench of this Court in *C. Puttaswamy v Smt. Prema*, and that the meeting of the Grama Panchayat having been admittedly held more than 30 days after the no-confidence motion was moved, there was no option but to declare the same to be illegal. Decisions were cited in support of the submission that where the provisions of the statute are clear and unambiguous, the Courts must give effect to the same.

4. Before I deal with the merit of the above contention, I deem it proper to deal with yet another aspect which cannot in my opinion be neglected. As noticed earlier, the no-confidence motion was set down for discussion in the meeting of the Grama Panchayat on 10-10-1996 for which a proper notice was issued by the Assistant Commissioner to all the members of the Panchayat. It is not the case of the petitioners that the notices issued by the Assistant Commissioner were not received by them or by the other members of the Panchayat. On the date of the issue of the notice itself, the petitioners knew that the proposed meeting convened by the Assistant Commissioner to discuss the motion was beyond the period of 30 days prescribed under the rules. The first opportunity to point out the alleged illegality in the holding of the proposed meeting thus came no sooner the notice was issued by the Assistant Commissioner and served upon them. It is not however disputed that the petitioners did not at any stage question the validity of the notice issued to them for the meeting scheduled to be held more than 30 days after the receipt of the motion. No such objection was raised by any other member of the Panchayat either. Not only that on 10-10-1996 when the motion came up for discussion the petitioners absented themselves and thereby acquiesced to the holding of the meeting no matter the same was beyond the statutory period prescribed by Rule 3. On the date of the meeting, 2/3rd of the members of the Panchayat also did not object to the holding of the meeting beyond the prescribed

period of 30 days. The motion was put to vote and carried as already mentioned earlier. The question then is whether the petitioners should be allowed to make a grievance against the alleged illegality at this distant point of time. My answer is in the negative. The facts reveal that the petitioners were at no stage either keen or diligent to ensure compliance with what they considered to be a mandatory requirement of law. On the contrary they remained content with the procedure adopted by the Assistant Commissioner and thereby acquiesced in the entire process. Having done so, they cannot at this stage turn round and question the consequence flowing from the meeting on the ground that the provisions of Rule 3 were mandatory and their violation was enough to vitiate the proceedings. The jurisdiction of this Court under Article 226 is discretionary. It is not in every case where an illegality or an irregularity is committed that this Court need to interfere. That is particularly so when the violation alleged is of a statutory provision which is in essence procedural in nature and not a fundamental right guaranteed by Part III of the Constitution. The conduct of the persons who make a grievance against any such illegality or irregularity is as much important as the nature of the illegality or its consequences. Once it is noticed that a party has slept over the matter, acquiesced in the process and allowed a situation to come about, a writ Court can legitimately decline to exercise jurisdiction. Super added to all this is the fact that after the petitioners removal, the democratic process envisaged under the Act has culminated in a fresh election and thrown up a new Adhyaksha who enjoys the support and confidence of 2/3rd of the membership of the Panchayat. It would therefore be anomalous and even ironical if this Court were to thrust upon the Panchayat two office bearers who have lost their confidence having been removed by no less than 2/3rd majority of the total membership of the Panchayat. These writ petitions are therefore liable to be dismissed on that short ground alone. Since however the question whether the provisions of Rule 3 are mandatory or directory was also argued at great length, I may as well deal with that aspect also. Rule 3 reads thus:

'3. Motion of no-confidence.-

(1) A written notice of intention to make the motion under the proviso to Section 49 shall be in Form I signed by not less than one-third of the total number of members

together with a copy of the proposed motion shall be delivered in person by any two of the members signing the notice to the Assistant Commissioner.

(2) The Assistant Commissioner shall thereafter convene a meeting for the consideration of the said motion at the office of the Grama Panchayat on the date appointed by him which shall not be later than thirty days from the date on which the notice under sub-rule (1) was delivered to him. He shall give to the members a notice of not less than fifteen clear days of such meeting in Form II:

Provided that where the holding of such meeting is stayed by an order of a Court, the Assistant Commissioner shall adjourn the said meeting and shall hold the adjourned meeting on a date not later than thirty days from the date on which he receives the intimation about the vacation of stay, after giving to the members, a notice of not less than fifteen clear days of such adjourned meeting.

(3) A notice in Form II shall be given to every member including the Adhyaksha and Upadhyaksha.-

(a) by delivering or tendering the said notice to such member; or

(b) if such member is not found, by leaving such notice at his last known place of residence or business within the Grama Panchayat or by giving or tendering the same to some adult member or servant of his family; or

(c) by registered posts; or

(d) if none of the means aforesaid be available, by affixing such notice on some conspicuous part of the house, if any, in which the member is known to have last resided or carried on business within the Grama Panchayat.

(4) The quorum for such meeting shall be two thirds of the total number of members of the Grama Panchayat. The Assistant Commissioner shall preside at such meeting.

Explanation: For determination of two third of total number of members under this sub-rule any fraction arrived at shall be construed as one.

(5) Save as otherwise provided in the Act or these rules, a meeting convened for the purpose of considering a motion under sub-rule (2) shall not for any reason be adjourned.

(6) If there is no quorum, within one hour after the time appointed for the meeting, the meeting shall stand dissolved and the notice given under sub-rule (1) shall lapse.

(7) As soon as the meeting convened and sub-rule (2) commences the Assistant Commissioner shall read to the members of the Grama Panchayat, the motion for the consideration of which the meeting has been convened and shall put it to vote without any debate.

(8) The Assistant Commissioner shall not speak on the merits of the motion and he shall not be entitled to vote thereon.

(9) If the motion is carried by a majority of not less than two thirds of the total number of members of the Grama Panchayat, the Adyaksha or Upadhyaksha, as the case may be, shall forthwith cease to function as such and the Assistant Commissioner shall, as soon as may be, notify such cessation on the notice board of the office of the Grama Panchayat and also inform the Adhyaksha or Upadhyaksha, as the case may be, regarding such cessation, if he is not present at the meeting.

(10) After the cessation is notified under sub-rule (9) the Adhyaksha or Upadhyaksha as the case may be shall, immediately hand over all documents, moneys or other properties of the Grama Panchayat in his custody to the Secretary of the Grama Panchayat.

(11) The election to the office of Adhyaksha or Upadhyaksha shall not be held until the notification under sub-rule (9) removing the Adhyaksha or Upadhyaksha, as the case may be, is published'.

5. A plain reading of the above would show that sub-rule (2) of Rule 3 is in two parts: one which requires each member of the Panchayat to be given not less than 15 days clear notice of the meeting convened to discuss the no-confidence motion

and the other which requires that the meeting so convened should be within 30 days from the date the motion is made. Insofar as the rule requires 15 days prior notice to the members of the Panchayat, the same is and ought to be interpreted to be mandatory in character. That is because, the purpose underlying the requirement of a 15 days notice is to not only ensure that the members have sufficient time to deliberate upon the proposed motion but also confer with each other and take a conscious and careful decision on the subject. The rule is intended to ensure that motions of no-confidence are not rushed through without giving to the members voting at the meeting sufficient time to ruminate and take a considered decision. It also aims at ensuring that those holding elected offices as Adhyaksha and Upadhyaksha are not dislodged from their position post-haste and summarily. That precisely was what the full bench of this Court also held in Puttaswamy's case, supra, relied upon by the petitioners. The question referred to the Full Bench was answered by the Bench in the following words:

'The Provision under Section 47(3) of the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983, requiring the Assistant Commissioner to give to members of a Mandal Panchayat notice of a meeting for consideration of a motion of no-confidence against the Pradhan or Upa-Pradhan 'of not less than 15 days of such meeting' is mandatory'.

6. The Full Bench was not however concerned with the other aspect of the rule, according to which the meeting for discussing a no-confidence motion is required to be convened not later than 30 days from the date notice of motion is given. The decision is silent as to whether such a requirement can be considered mandatory. It does not therefore lend any assistance to the petitioners. The nature of the requirement shall have to be considered independently.

7. While deciding whether a provision is mandatory or directory in nature, the Courts have evolved different tests for application. One of the tests is whether the provision itself stipulates the consequences of the violation thereof, although even that test has not been treated to be conclusive. In other words, even where the provision does not provide for the consequences of its violation the same can be mandatory in character. The legal position regarding the approach to be adopted

by the Courts in examining the provisions from the point of view of finding out whether they are mandatory or directory has been summed up by the Supreme Court in *Sharif-Ud-Din v Abdul Gani Lone*, in the following words.-

'The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter, substantial compliance may be sufficient to achieve the object regarding which the rule is enacted. Certain broad propositions which can be deduced from several decisions of Courts regarding the rules of construction that should be followed in determining whether a provision of law is directory or mandatory may be summarized thus: The fact that the statute uses the word 'shall' while laying down a duty is not conclusive on the question whether it is a mandatory or directory provision. In order to find out the true character of the legislation, the Court has to ascertain the object which the provision of law in question is to subserve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision of law relates to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one. Where however, a provision of law prescribes that a certain act has to be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another when such act is not done in that manner, the former has to be regarded as a mandatory one. A procedural rule ordinarily should not be construed as mandatory if the defect in the act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage unless by according such permission to rectify the error later on, another rule would be contravened. Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that a failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow'.

8. Similarly in *Dalchand v Municipal Corporation, Bhopal and Another*, the Court while reiterating the above position declared that there are no ready tests or invariable formulae to determine whether a particular provision in a statute is mandatory or directory. The broad purpose of the statute, the object of the particular provision and the link between the two was held to be important. The weighing of the consequence of holding a provision to be mandatory or directory is vital and more often than not determinative of the question. Reference may also be made to the decision of the Supreme Court in *Karnal Leather Karamchari Sanghatan (Registered) v Liberty Footwear Company (Registered) and Others*, where the Court held thus:

'26. It is well established that the wordings of any provision are not determinative as to whether it is, absolute or directory. Even the absence of penal provision for non-compliance does not lead to an inference that it is only directory. The Court, therefore, must carefully get into the underlying idea and ascertain the purpose to be achieved notwithstanding the text of the provision'.

9. Against the above backdrop, if we examine Rule 3 insofar as it directs that a meeting should be held not later than 30 days from the date the motion is made, the only object which is sought to be achieved by the provision is to ensure that motions of no-confidence do not remain unattended. All that is meant to be achieved is that the authority concerned expeditiously arranges to have the motion put to vote after due notice to the members. It ensures that those moving the motion get the earliest possible opportunity to put to test their move. That being so, the requirement of holding a meeting within 30 days cannot be said to be mandatory not only because the consequences of a failure to abide by the requirement are not stipulated but also because the rule does not suggest that a motion duly moved by 2/3rd of the members of the Panchyat would lose its efficacy if for one reason or the other, a meeting is not convened within 30 days. The purpose underlying the provision is also in no way affected or defeated if the meeting is conducted within a reasonable period by the authority concerned no matter beyond the period of 30 days. Substantial compliance with the provision would in any such case suffice.

10. In the instant case, there was a delay of 3 days in the holding of meeting. Instead of 6th October, the meeting was held on 10-10-1996. No prejudice has been claimed nor could possibly be claimed by those who had lost the confidence of 2/3rd members of the Panchayat if the meeting was delayed by a few days. As a matter of fact, the delay in the holding of the meeting had only resulted in the continuance of the incumbents for that much more period than what they would have otherwise done. Such being the position, I see no merit in the submission that the proceedings held on 10-10-1996 were in any way vitiated by any illegality. I may however hasten to add that the mere fact that the provision regarding holding of the meeting for discussion of the no-confidence motion has been held to be directory would not mean that the authorities should overlook the time-frame or delay the holding of such meetings. The requirement of the statute is that the authority competent must endeavour to hold such a meeting within the time prescribed and the authorities are as far as possible expected to adhere to the stipulated time-frame. But that does not mean that if there has been for any reason either wittingly or unwittingly, a delay in the holding of the meeting, the resolution passed would stand vitiated. That consequence does not in my opinion flow from a violation of the second requirement of Rule 3(2). If the motion has been otherwise carried by the kind of majority required for the same, its effect cannot be nullified only because the meeting in which the same was debated was delayed by a few days especially when there are no allegations of mala fides or any other corrupt motive behind the delay in the holding of the meeting.

11. In the result there is no merit in these petitions which are hereby dismissed with costs assessed at Rs. 1,000/- in each petition.