

Ashok Vs. Assistant Commissioner, Chickodi Sub Division and ors.

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Court : Karnataka

Decided On : Sep-16-2004

Reported in : ILR2004KAR4557; 2004(7)KarLJ524

Judge : D.V. Shylendra Kumar, J.

Acts : Karnataka Panchayatraj Act, 1993 - Sections 49; Karnataka Panchayat Raj (Motion of No-Confidence Against Adhyaksha and Upadhyaksha of Gram Panchayat) Rules, 1994 - Rule 3(8)

Appeal No. : WP No. 32540/2004

Appellant : Ashok

Respondent : Assistant Commissioner, Chickodi Sub Division and ors.

Advocate for Def. : H.B. Narayana, HCGP for R1, ;Jayakumar S. Patil, Sr. Counsel for ;Iqbal Patel, Adv. for C/R2 and R3 and ;Riyaz Ahmed, Adv. for R4

Advocate for Pet/Ap. : Shantesh Gureddi, Adv.

Disposition : Petition allowed

Judgement :

D.V. Shylendra Kumar, J.

1. This Writ Petition raises a short but interesting question as to when can it be said that a 'No Confidence Motion' moved in terms of the provisions of Section 49 of the Karnataka Panchayatraj Act, 1993 [for short, 'the Act'] expressing no-confidence in the post of a President of the Panchayat can be said to be carried by two-third of the total Membership of the Panchayat supporting it in a situation where there are certain vacancies in the Membership of the composition of the Panchayat; vacancies casual in nature and due to either resignation or death or like reasons.

2. The question is as to whether the number to constitute two- third majority should be computed on the basis of the total number of Members that constitute the Panchayat at that time and are available or should the expression 'total number of members of the Panchayat', include even such number of Members in respect of whom casual vacancies have arisen and have ceased to be Members of the Panchayat.

3. The facts leading to the above petition are quite brief and are undisputed.

4. Writ petitioner is a Member of Chincholi Gram Panchayat of Raibag Taluk, Belgaum District. Petitioner along with 17 other members of this Panchayat, it appears, had given a requisition to the Assistant Commissioner-Respondent No.1 requesting for fixing a Meeting to consider a motion of No Confidence against the Respondent Nos. 2 and 3 who had been elected as 'Adhyaksha' and 'Upadhyaksha' respectively of this Panchayat.

5. In terms of such requisition, the Assistant Commissioner had issued a Notice dated 15.7.2004 indicating that a Meeting for such purpose is scheduled to be held on 5.8.2004. A Meeting of this nature was in fact held and at such a Meeting, 33 Members were present, amongst whom 22 Members had supported the Motion. To this extent and upto this stage there has no dispute about the facts amongst the parties to the petition. It is only to the events thereafter namely a recording by the Assistant Commissioner in terms of a Notification dated 5.8.2004 issued by the Assistant Commissioner, Chikkodi who had presided over the Meeting [Copy at Annexures-G] as also another Notification of the even date as per Annexure-G1 in respect of the President and the Vice-President respectively of the Panchayat that

the controversy has arisen.

6. It so happened that the Assistant Commissioner recorded his view to the effect that the Motion having been supported by 22 Members, it was short of the requisite two-third majority as in his view the total number of Membership of the Panchayat was 34 and as such the motion had failed. It is challenging these two Notifications dated 5.8.2004 [Copy at Annexures-G and G1] the present Writ Petition is filed, inter alia, contending that the Assistant Commissioner was in error in issuing a Notification of this nature; that he has committed a gross error in expressing his view to the effect that the motion is not carried; that he was not required to indicate any such thing nor the Notification reflective of the correct legal or factual position with regard to the outcome of the motion and the same is required to be quashed and the legal position clarified and further to direct the Assistant Commissioner to effectuate the legal position by issue of a writ in the nature of mandamus.

7. Notices had been issued to the respondents. Respondent No.1 - Assistant Commissioner is represented by Sri H.B. Narayana, Learned Government Pleader. Respondent Nos.2 and 3 are represented by Sri Iqbal Patel led by Sri Jayakumar S. Patil Senior Counsel. Respondent No. 4 - Gram Panchayat is represented by Sri. Riyaz Ahmed.

8. I have heard Sri. Shantesh Gureddi, learned Counsel for the petitioner and learned Counsel for the respondents and the Writ Petition is being take up for disposal and disposed of in terms of the following order:

9. Submission of Sri. Shantesh Gureddi, learned Counsel for the petitioner is that the Assistant Commissioner has committed a grave error in issuing the Notifications as at Annexures-G & G1; that the moment the 22 members of the Panchayat had supported the motion, the motion is carried with the requisite majority of the number of members as contemplated under Section 49 of the Act. Submission of the learned Counsel for the petitioner is that the Assistant Commissioner on an erroneous premise concluded that two-third majority of the Panchayat is made up of 23 members of the Panchayat, who had supported the motion; that such conclusion is in turn on the premise that the total composition

and total number of members of the Panchayat is 34, which is not factually correct; that on the other hand it is only 33, in as much as one member of the Panchayat had died subsequent to the elections to the Panchayat having taken place and that the membership of one member had fallen vacant. That for the purpose of computing total membership of the Panchayat, the Assistant Commissioner should have proceeded on the number of members available in the Panchayat who could participate in the meeting and express their confidence or otherwise that taking into account the membership of a dead person in calculating not only the total membership of the Panchayat but also in computing two-thirds majority of the Panchayat, has led to the Assistant Commissioner issuing erroneous notifications as per Annexure-G and G1 and therefore the same are required to be quashed.

10. It is also the submission of the learned Counsel for the petitioner that it was not incumbent upon the Assistant Commissioner to have issued a notification of this nature, as the Assistant Commissioner is not required to speak on the merits of the motion and is not entitled to vote and so also in terms of sub-rule 8 of Rule 3 of the Karnataka Panchayat Raj (Motion of Non-confidence against Adhyaksha and Upadhyaksha of Gram Panchayat) Rules, 1994 [for short the 'Rules'] and what was required to be done by the Assistant Commissioner, in terms of sub-Rule 9 of Rule 3, is only when the motion is carried, and there was no occasion for the Assistant Commissioner to have acted when the motion had not been carried, to issue any notification as per Annexure-G and G1. Learned Counsel for the petitioner also submits that the provisions of Section 49 by themselves take care of the situation where a no-confidence motion is carried by the requisite majority of the members of the Panchayat, supporting the motion, that the moment the motion is carried by operation of law the Adhyaksha or Upadhyaksha as the case may be, is deemed to have vacated his/her office and it is not by any physical act or order issued by the Assistant Commissioner, while exercising his function under Rule 3 of the Rules the Adhyaksha or Upadhyaksha loses the post. The role of the Assistant Commissioner is only to give effect or implement the legal position that follows when a motion of non-confidence is carried against the Adhyaksha or Upadhyaksha. Learned Counsel for the petitioner also submits that it is unthinkable that the membership of a dead person is counted either for computing total membership of the Panchayat or for computing two-third majority of such

members.

11. Learned Counsel for the petitioner, in support of his contentions, placed reliance of a decision of a Full Bench of this Court rendered in the case of K.M. RAMAKRISHNE GOWDA v. SENIOR ASSISTANT COMMISSIONER : ILR 1990 KAR3770 Learned Counsel submits that the corresponding provision is contained in the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 [for short, 1983 Act] viz., Section 47, which had came up for interpretation before this Court in an identical situation, where also there were certain casual vacancies due to death of some of the members, the Full Bench of this Court while interpreting the provisions of Section 47 of the 1983 Act, has held that the total membership (of a Panchayat) can only be such number of members who are actually available on the given date and not merely the total number of members as had been notified and in respect of which, the number of members election had been held. The Full Court held that the total number of membership is fixed and as indicated in the notification at the beginning of the composition of the Panchayat, and cannot be accepted for the reason that if such procedure is to be accepted in a situation where the casual vacancies reach one-third of the membership then, there will not be any possibility of the available members moving a motion of no-confidence against the Adhyaksha or Upadhyaksha, in such an event the very provision providing a right in favour of the members for moving such a no-confidence motion will be rendered nugatory and an interpretation leading to the frustration or defeating of the provisions of the Act cannot be accepted. Learned Counsel for the petitioner further submits that this interpretation of the Full Bench of this Court has been followed in another case by a Division Bench in the case of SMT. CHANDUBAI v. DEPUTY COMMISSIONER, CHITRADURGA W.P. No. 12320/97, dd. 10.12.1997. The learned Counsel submits that the law laid down by the Full bench in understanding meaning of the words 'total number of members' of the panchayat has been applied by the Division Bench in understanding and analog provisions occurred in the Karnataka Municipalities Act, 1964 [for short, the Municipalities Act] particularly for the purpose of interpreting the provisions of Section 42(9) of the Municipalities Act. Sri Shantesh Gureddi, learned Counsel for the petitioner submits that in the light of those two decisions, the provision of Section 49 of the Act is virtually in pari

materia with the provision as it occurred in the 1983 Act and a similar provision in the Municipalities Act. Section 49 of the Act reads, as under:

49. Motion of no-confidence against Adhyaksha or Upadhyaksha of Gram Panchayat: -Every Adhyaksha or Upadhyaksha of Gram Panchayat shall forthwith be deemed to have vacated his office if a resolution expressing want of confidence in him is passed by a majority of not less than two-thirds of the total number of members of the Gram Panchayat at a meeting specially convened for the purpose in accordance with the procedure as may be prescribed.

Provided that no such resolution shall be moved unless notice of the resolution is signed by less than one-third of the total number of members and at least ten days notice has been given of the intention to move the resolution.

Provided further that no resolution expressing want of confidence against an Adhyaksha or Upadhyaksha, shall be moved within one year from the date of his election.

Provided also that where a resolution expressing want of confidence in any Adhyaksha or Upadhyaksha has been considered and negatived by a Grama Panchayat a similar resolution in respect of the same Adhyaksha or Upadhyaksha shall not be given notice of, or moved within one year from the date of the decision of the Grama Panchayat. 2 W. P. No. 12320/97.dd 10.12.1997

Rule 3 of the Rules reads as under:

(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 Gram 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 Gram Panchayat.

12. Learned Counsel for the petitioner, therefore, submits that the interpretation placed by the Full Bench and the Division Bench of this Court has to be followed in the understanding words of Section 49 and that is the legal position. The Action of the Assistant Commissioner as indicated in Annexure-G and G1 is not sustainable and they are liable to be quashed and an intimation be issued to the Assistant Commissioner to act in accordance with the requirement of sub-Rule 9 of Rule 3 of the Rules.

13. Sri Jayakumar S. Patil, learned Senior Counsel, appearing for the respondent Nos. 2 and 3 submits that though the Assistant Commissioner was not required to act as under Annexure-G and G1, if he is of the opinion that the motion has not been carried, nevertheless, there is nothing wrong in issuing the notifications, as the Assistant Commissioner is only reflecting the factual and legal position. It is the submission of learned Counsel for the respondents 2 and 3 that the membership of the Panchayat as inferred in Section 5 of the Act, which provides for the constitution of a gram panchayat indicates that it consists of such number of elected members as may be notified from time to time by the State Election Commissioner. Learned Counsel, by drawing the attention of the Court to Section 5 of the Act, submits that when once the number of members of the Panchayat is notified, that is the total number of members of the Panchayat and such a figure cannot be made an indefinite or varying figure, depending upon the occurrence of the vacancies, particularly, as indicated in subsection 5 of Section 2 of the Act. The submission of Sri Jayakumar S. Patil is that when once the number of members of the Panchayat is fixed by notification, the total number of membership would be the said number and not any other number and as such, the Assistant Commissioner was right in ignoring the factum of death of one of the members and there being a casual vacancy due to such death and nevertheless proceeding on the premise that the total membership is 34 and not 33. Sub-section 5 to Section 2 of the Act reads as follows:

2(5)'Casual Vacancy' means a vacancy occurring otherwise than by efflux of time.

Section 5 of the Act reads thus:

5. Constitution of Grama Panchayat -

(1) The Grama Panchayat shall consist of such number of elected members as may be notified from time to time by the State Election Commission, at the rate of one member for every four hundred population or part there of the Panchayat area:

Provided that the determination of the number as aforesaid shall not affect the then composition of the Grama Panchayat until the expiry of the term of office of the elected members in office.

(2) Seats shall subject to the general or special order of the State Election Commission, be reserved by the Deputy Commissioner in a Grama Panchayat -

a) for the scheduled castes; and

b) for the scheduled tribes;

and the number of seats so reserved shall bear as nearly as may be, the same proportion to the total number of seats in the Gram Panchayat as the population of the Scheduled Castes in the Panchayat area or of the Scheduled Tribes in the Panchayat area bears to the total population of the Panchayat area:

Provided that at least one seat each shall be reserved in a Grama Panchayat for the persons belonging to the Scheduled Caste and the Scheduled Tribes:

Provided further that, if no person belonging to the Scheduled Castes is available the seats reserved for that category shall also be filled by the persons belonging to Scheduled Tribes and vice versa.

(3) Such number of seats which shall, as nearly may be one- third of the total number of seats of the Grama Panchayat shall subject to the general or special

order of the State Election Commission be served by the Deputy Commissioner for persons belonging to the Backward Classes.

Provided that out of the seats reserved under this sub-section, eighty per cent of the total number of such cases shall subject to the general or special order of the State Election Commission be reserved by the Deputy Commissioner for the persons falling under Category 'A' and the remaining twenty per cent of the seats shall subject to the general or special order of the State Election Commission be reserved by the Deputy Commissioner for the persons falling under category 'B'.

Provided further that if no person falling under category 'A' is available, the seats reserved for that category shall also be filled by the persons falling under category 'B' and vice versa.

Explanation: For the purpose of this subsection, proviso to clause (b) of sub-section (2) of Section 44, sub-section (2) of Section 123, clause (b) of sub-section (2) of Section 138, sub-section (2) of Section 162 and clause (b) of sub-section (2) of Section 17, categories 'and 'B' shall mean category 'A' and 'B' referred to in clause (2) of Section 2.

(4) Not less than one-third of the seats reserved in each category for persons belonging to the Scheduled Castes, Scheduled Tribes and Backward Classes and of the non-reserved seats in the Grama Panchayat shall subject to the general or special order of the State Election Commission be reserved by the Deputy Commissioner for women.

Provided that the seats reserved under sub-sections (2), (3) and (4) shall be allotted by rotation, to different constituencies in the Panchayat area:

Provided further that nothing contained in this section shall be deemed to prevent a women or a person belonging to the Scheduled Castes and Scheduled Tribes or Backward Classes for whom seats have been reserved in a Grama Panchayat from standing for election to any non-reserved seat in such Gram Panchayat.

(5) Subject to the provisions of sub-Sections (2), (3) and (4) and subject to the general or special order of the State Election Commission, the Deputy

Commissioner shall, by notification determine:

a) the constituencies into which the area within the jurisdiction of every Grama Panchayat shall be divided for the purpose of elections to every Grama Panchayat;

b) the extent of each constituency;

c) the number of seats, if any, reserved for the Scheduled Castes, the Scheduled Tribes, Backward Classes or women in each constituency; and

d) the number of seats allotted to each constituency which shall be one or more

(6) If for any reason, the election to any Grama Panchayat does not result in the election of the required number of members as specified in sub-section (1), the Deputy Commissioner, shall within one month from the date on which the names of the elected members are published by him under sub-section (8) arrange another election for the election of such number of members as will make up the required number.

(7) Notwithstanding anything contained in sub-section (1) and (6) but subject to any general or special orders of the Government, where two third of the total number of members of any Grama Panchayat have been elected, the Grama Panchayat shall be deemed to have been duly constituted under this Act.

(8) The Deputy Commissioner shall publish in the prescribed manner, the names of members elected or deemed to have been elected.

14. Learned Counsel for the respondent Nos. 2 and 3 submits that if 34 is the total number of membership of the Panchayat, then support to the motion by 22 members falls short of the requisite two-third majority which will be made good only by 23 members who should have supported the motion. Learned Counsel submits that though there is a fraction in the sense of two-third majority is made up by the figure as $22 \frac{2}{3}$, fraction is to be taken as full member in terms of the provisions of the Act and the Rules and as such, 23 alone constitute two-thirds majority of the total membership of the Panchayat and if this is the true legal

position, the motion is obviously defeated.

15. In support of such submissions Sri Jayakumar S. Patil has also further drawn the attention of the Court to the procedure regarding the election of the Adhyaksha or Upadhyaksha of a gram Panchayat, which is by simple majority of the membership of the Panchayat, whereas for the removal by expressing lack of confidence in a motion against the Adhyaksha or Upadhyaksha, the requisite majority is two-third of the total membership and such a provision itself indicates that the number that is sought to be provided for the election of the Adhyaksha or Upadhyaksha is not the same for their removal and prescribing a higher number i.e. by a majority of two-thirds of the membership is in the nature of a safeguard; that safeguard should not be, in any way, diluted by a process of interpretation or in any other manner. The submission of Sri Jayakumar S. Patil is that the total number of membership of the Panchayat, if is to be reckoned as 33, as is sought to be contended on behalf of the petitioner, it would amount to rewriting the relevant provision of law, which is not the domain of this Court. Accordingly, learned Counsel prays for dismissal of the Writ Petition.

16. Sri Jayakumar S. Patil, learned Counsel for the respondent Nos. 2 and 3, on the other hand, places reliance of the unreported decision rendered by this Court in SMT. NARASAMMA v. STATE OF KARNATAKA W.P. 2073/2004, dd on 8.7.04, wherein the provision of Section 49 of the very Act had come in for interpretation. Learned Counsel submits that the argument that two-thirds majority required to carry a motion of no-confidence is made good even if two-thirds of the members present and voting had supported the motion had been expressly rejected. It is pointed out that the requirement of law is that two-thirds of the total number of members of the gram panchayat at a meeting specially convened for the purpose should support the motion and not merely two-thirds of the members present and voting at the meeting.

17. While the above decision can be an authority for the proposition that it is only two-third of the total number of members of the Panchayat, if have supported the motion, it is carried and not the two-thirds of the number of members present at the meeting and supporting, it cannot be considered to be a valid authority for the

purpose of understanding or interpreting the provisions of Section 49 of the Act, in so far as the expression 'total number of members of the gram panchayat' is concerned. For understanding the expression 'total number of members of the gram panchayat', the decision rendered by the Full Bench in the case of K.M. RAMAKRISHNE GOWDA [supra] and followed by the Division Bench in SMT. CHANDUBI [supra] can be considered as the valid authority, and not the decision relied on by the learned Counsel for respondents 2 and 3.

18. Sri H.B. Narayan, learned High Court Government Pleader, on behalf of the first respondent -Assistant Commissioner, on an examination of the legal position, submitted that the action of the Assistant Commissioner appears to be, prima facie, not in consonance with the provisions of the Act, particularly in the light of the interpretation given by a Full Bench, followed by a Division Bench of this Court, in the cases referred to above, and in the light of such legal and factual position, it may be difficult to sustain the notification issued by the Assistant Commissioner in terms of Annexure-G and G1.

19. Though Sri Jayakumar S. Patil learned Senior Counsel, appearing for the respondent Nos. 2 and 3, has urged many other contentions, they are not very material for the purpose of rendering decision in this Writ Petition, particularly, in the light of the settled legal position on this aspect of the matter, as laid down by the Full Bench and followed by the Division Bench of this Court, in the cases referred to above.

20. In the circumstances, this petition is allowed. The impugned notifications dated 5:8.2004, vide Annexure-G and G1, are hereby quashed. The legal position is that the total number of membership of the Panchayat as on the given date can be taken only as 33 and 22 members having supported the motion, the motion is carried against the Adhyaksha and Upadhyaksha in terms of the provisions of Section 49 of the Act, and by operation of law, they are deemed to have vacated their offices and it is incumbent upon the Assistant Commissioner [first respondent] to issue notifications and take further action in terms of sub-rule 9 of Rule 3 of the Rules and direct the respondent Nos. 2 and 3 to act in accordance with sub- rule 10 of Rule 3 of the Rules, and further steps to be taken thereafter in

accordance with law.

21. A writ of mandamus is issued directing the 1st respondent to act as indicated above.

22. Rule issued and made absolute.

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