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**SooperKanoon Citation : [sooperkanoon.com/386079](http://sooperkanoon.com/386079)**

**Court : Karnataka**

**Decided On : Sep-08-2004**

**Reported in : 2004(7)KarLJ498**

**Judge : D.V. Shylendra Kumar, J.**

**Acts : Karnataka Panchayat Raj (Motion of no-confidence against Adhyaksha and Upadhyaksha of Grama Panchayat) Rules, 1994 - Rule 3(2)**

**Appeal No. : Writ Petition No. 35247 of 2004**

**Appellant : Somasekhar and anr.**

**Respondent : The Assistant Commissioner, Koppal Sub-division and anr.**

**Advocate for Def. : H.B. Narayana, High Court Government Pleader for Respondent-1**

**Advocate for Pet/Ap. : Praveen Kumar Raikote, Adv.**

**Disposition : Petition dismissed**

**Judgement :**

**ORDER**

## **D.V. Shylendra Kumar, J.**

1. Petitioners claim to be Adhyaksha and Upadhyaksha of Bevoor Grama Panchayat, Yelburga Taluk, Koppal District. Petitioners are weary of facing a no-confidence motion for the purpose of consideration of which a meeting is fixed in terms of a notice dated 17-8-2004, issued to the members of the Panchayat by the Assistant Commissioner apprising them that such a meeting will be held on 9-9-2004.

2. It is the legality of this notice that is questioned in this writ petition inter alia on the ground that the notice is not valid in law; that the requisite procedure prescribed under Sub-rule (2) of Rule 3 of the Karnataka Panchayat Raj (Motion of no-confidence against Adhyaksha and Upadhyaksha of Grama Panchayat) Rules, 1994 have not been followed or complied with and a meeting fixed in pursuance of such an invalid notice cannot be held to be tenable or a valid meeting and as such unless the meeting is one that follows a valid notice, it should not be permitted to proceed with for consideration of no-confidence motion etc.

3. Sri Praveen Kumar Raikote, learned Counsel for the petitioners submits that the requisite number of members to call for such a meeting in reality have not signed; that the requisition notice of the meeting is actually forged; that some of the members have in fact also been abducted and are not available to attend the meeting, that the atmosphere is not conducive for holding a meeting. In such circumstances, the notice dated 17-8-2004 should be quashed and the Assistant Commissioner directed to proceed in accordance with law etc.

4. Petitioners have become President and Vice-President of this Panchayat on being elected to these posts with the support of the requisite number of members of the Panchayat, which is by the majority of members at a meeting held for such purpose. A no-confidence motion can be moved if 1/3rd of the members of the Panchayat requisition for the same indicating that it is for the purpose of moving a no-confidence motion and the empowered officer will have to fix a meeting, by ensuring an interval of 15 days between the meeting and the notice reaching the members.

5. A motion will be carried only if it is supported by not less than 2/3rd of the membership of the Panchayat. An examination of this provision clearly indicates that a person after getting elected to the post of President can retain it even with the support of a lesser number of members of the Panchayat, than the number of members supporting the no-confidence motion. To carry such a motion it should be necessarily by not less than 2/3rd of the membership. The very provision is a safeguard in favour of persons holding the posts. In such a scenario persons in such posts, who are elected as Adhyaksha and Upadhyaksha with the support of the members of the requisite number of such members, should rather retain the post if they enjoy their confidence and not otherwise and that is the spirit of democracy.

6. It cannot be gainsaid that moving a motion of no-confidence is a right given to the members, who constitute the electoral college to elect the President and Vice-President to the Panchayat. If such President and Vice-President have lost their confidence, when such members want to exercise such right and test as to whether persons elected to the post of President and Vice-President still continue to enjoy the support of the members, persons holding the posts should not resort to other methods, calling in aid technicalities to scuttle even holding of such a meeting.

7. Assuming that there are certain irregularities in the issue of notice fixing a meeting, ultimately what matters is that if and only if the motion is carried by not less than 2/3rd of the membership of the Panchayat, the elected persons lose the post and not otherwise. It is rather speculative at this stage as to whether such an event will occur or not.

8. Though learned Counsel for the petitioners have placed reliance on certain earlier decisions of this Court holding that a notice for the purpose of calling a meeting to consider a proposal to move a resolution of no-confidence motion against Adhyaksha or Upadhyaksha if is not in conformity with the relevant rules deserves to be quashed, I am of the view that it is not necessary to exercise writ jurisdiction at this stage when such a meeting has not even been held. It is always open to the petitioners to gain support of the members and retain their position

rather than calling in aid technicalities to consolidate their position and continue to remain in posts, even if not wanted by members of the very Panchayat.

9. I am not inclined to exercise the discretionary writ jurisdiction in favour of the petitioners and at this stage, writ petition is accordingly dismissed.

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