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SooperKanoon Citation : sooperkanoon.com/424278

Court : Andhra Pradesh

Decided On : Sep-18-1997

Reported in : 1998(1)ALD153; 1998(1)ALT467

Judge : B. Sudershan Reddy, J.

Acts : Andhra Pradesh Municipalities Act, 1965 - Sections 2, 4, 5(2), 46, 46(4, 5, 6 and 14) and 59(1); [The Constitution \(Seventy Fourth Amendment Act, 1992\)](#); [Constitution of India](#) - Articles 243-(A, K, U, W, X and Y); Andhra Pradesh Municipal Laws (Second Amendment) Act, 1994 - Sections 23 and 25

Appeal No. : W.P. No. 21526 of 1997

Appellant : V.S. Mukthar and anr.

Respondent : Principal Secretary to Govt., Municipal Administration and Urban Development Department, Govt. of

Advocate for Def. : Advocate General for the Government Pleader MCH and ;Mr. P. Veera Reddy, Adv.

Advocate for Pet/Ap. : Mr. D. Sudershan Reddy, Adv.

Judgement :

1.The petitioners herein are the Municipal Councillors of Proddatur Municipality in Cuddapah District. They are aggrieved by the order passed by the first respondent herein in Memo No.1947/Ele-I/ 97-T M.A. dated 3-9-1997. The first respondent through the impugned Memo passed an order suspending the meeting convened and proposed to be held at 11-00 am on 4-9-1997 to consider motion of no-confidence against the Vice-Chairman on the said Municipality.

2. The facts leading to filing of this writ petition by the petitioners may briefly be summarised.

The Factual Matrix:

Elections to various Municipalities in the State of Andhra Pradesh were held in March,1995. Elections were held on the party basis and the political parties have set-up their candidates. The total strength of Proddatur Municipality is 39 including three Ex-Officio members. It is stated in the affidavit that out of 36 Ward members, 15 Ward members belong to 'Congress party and 13 of them belong to Telugu Desham Party and 8 independent candidates were declared elected. One K.Subba Rao was elected as Chairman and he belongs to Congress. The first petitioner herein has been elected from the 10th Ward and belongs to Congress Party and whereas the second petitioner herein was declared elected from the 8th Ward as an independent candidate. Respondent No.3 was duly declared elected from 11th Ward of the Municipality and belongs to Congress Party and whereas the fourth respondent was declared elected as an independent candidate from 18th Ward. The three Ex-Officio members i.e., the Local Member of Parliament, local Member of Legislative Assembly and the Municipal Chairman all belong to Congress Party. One M. Chandra Obul Reddy is stated to have been duly elected as Vice-Chairman of the Municipality in April. 1995 itself and he belongs to Telugu Desam Party. One Councillor P. Vijaya Muni Reddy elected from 25th Ward on behalf of Congress party is stated to have died about six months back. The present strength of Proddatur Municipality is 38.

3. It is stated that 21 members of the Municipality issued notice under sub-section (2) of Section 46 of the A.P. Municipalities Act, 1955, for short 'the Act' and submitted the same to the second respondent expressing their intention to move a motion of no-confidence against the Vice-Chairman of the Municipality. The second respondent after following the procedure required by law issued notice dated 14-8-1997 convening the meeting of the Municipal Council to be held on 4-9-1997 at 11-00 a.m. in the Council meeting hall, for consideration of the said no-confidence motion moved against the Vice-Chairman. It is at this stage the first respondent passed the impugned order dated 3-9-1997 and the second respondent displayed notice on 4-9-1997 in the Notice board of the Office informing all the concerned that special meeting convened to be held on 4-9-1997 to consider the no-confidence motion against the Vice-Chairman 'is stayed in view of the orders issued by the Andhra Pradesh Government in proceedings Memo No.1947/Elc-I/97-I M.A.dated 3-9-1997.

4. It is required to notice at this stage the second respondent herein issued notice on 14-8-1997 itself to all the members convening the meeting of the Council to be held on 4-9-1997 to consider the no-confidence motion. It is the case of the petitioners that Respondents 3 and 4 have also signed the requisition given to the second respondent herein along with 19 other members. It is submitted that the first respondent had intervened in the matter on the basis of the representation made by Respondents 3 and 4. It is alleged that Respondents 3 and 4 appear to have shifted their loyalty even though they have signed the requisition notice at the instance of the Vice-Chairman and other leaders belonging to Telugu Desam Party.

5. The writ petition filed by the petitioners came up for admission on 9-9-1997 and Rule Nisi was directed to be issued. The learned Govt. Pleader for Municipal Administration appeared on behalf of the Respondents 1 and 2 and sought for an adjournment to produce the records. On the same day Sri P. Veera Reddy, learned Counsel appeared on behalf of Respondents 3 and 4 and requested time for filing counter. The matter was directed to be listed on 12-9-1997. Respondents 3 and 4 filed counter-affidavits on 12-9-1997. Learned Govt. Pleader again requested two weeks time for filing counter-affidavit. But the request was rejected.

However, time was granted till 16-9-1997 for filing counter-affidavit, if any, by Respondents 1 and 2 and for production of records. On 16-9-1997 the learned Government Pleader requested for adjournment on the ground that the learned Advocate General would be appearing in the matter on behalf of Respondents 1 and 2. The matter was accordingly adjourned to be heard on 17-9-1997. The records are produced but no counter-affidavit is filed by Respondents 1 and 2.

6. In the counter-affidavit filed by the third respondent on her behalf and on behalf of fourth respondent, it is inter alia stated that they have been opposing all the unwarranted and unfair methods adopted by the Municipal Chairman and others with regard to various activities in the Municipality and so also one Bhadra Reddy belonging to Congress party was also opposing the style of functioning of the Municipal Chairman. It is alleged that their signatures were forged by the persons who are responsible for sponsoring the no-confidence motion against the Vice-Chairman. It is their case that the second respondent without even verifying as to who are the actual signatories to the notice and without making personal enquiry about the genuineness of the signatures has straight-away issued notice convening the meeting of the Council to be held on 4-9-1997. Both the respondents are stated to have issued public statement denying about their signing the notice of requisition for moving no-confidence motion against the Vice-Chairman. The Respondents 3 and 4 are alleged to have personally appeared before the second respondent and requested to withdraw the meeting proposed to be held on 4-9-1997. Since the second respondent failed to take any action, they were left with no other option and were constrained to make a representation in the matter to the first respondent to prevent the 'doing of an act which is not in accordance with law'. The first respondent had rightly intervened in the matter and passed order vide the impugned proceedings.

7. It is alleged that the actual intention of the writ petitioners and their group in submitting the requisition with 21 signatures forging some of the signatures is with an intention to lure the other Councillors to join their group by artificial show of their strength and ultimately to get the no-confidence motion passed against the Vice-Chairman. It is submitted that at their instance the first respondent intervened in the matter.

8. At this stage, it is required to notice that the notice convening the meeting was issued by the second respondent herein on 14-S-1997 itself. There is nothing on record to show that Respondents 3 and 4 raised their objection before the second respondent. It is no doubt true the Respondents 3 and 4 in their counter-affidavit state that they have raised objection before the second respondent. Nothing is stated as to whether any such objection was raised in writing and if so on what date. There is no material on record in support of the said case. What transpired between 14-8-1997 and 3-9-1997 is a matter of guess. The only document available on record is the representation made by Respondents 3 and 4 on 3-9-1997, i.e., a day before the meeting, addressed to the Hon'ble Minister for Municipal Administration and Urban Development, Government of Andhra Pradesh. The averment made in the counter-affidavit stating that they have raised objection before the second respondent herein does not inspire any confidence. It is difficult for the Court to act upon such vague and half hearted pleadings. It is stated inter alia in the said representation that they did not sign the requisition notice and their names shall have to be deleted from the requisition notice and if the two names are to be deleted from the requisition, there will be only nineteen signatures and such notice with only nineteen genuine signatures is not valid. On the said representation, the Hon'ble Minister passed an order which is to the following effect:

'No confidence motion of conduct of meeting on 4-9-97 at 10 a.m. is hereby stayed. Please issue Fax message to Collector, Cuddapah and R.D.O. Jammalamadugu immediately.'

There is no averment in the said representation that Respondents 3 and 4 lodging their protest before the Revenue Divisional officer. Nothing is alleged against the Revenue Divisional Officer. Of course, in the counter-affidavit, it is stated that the Revenue Divisional Officer failed to verify the genuineness of the signatures and in a casual manner, accepted the signatures as genuine and convened the meeting. I find it difficult to accept the present version of respondents herein.

9. The impugned Memo dated 3-9-1997 makes an interesting reading. The operative portion reads as follows :

'Now, therefore, the Government in exercise of their powers conferred by sub-section (1) of Section 59 of the Andhra Pradesh Municipalities Act, 1965 (Act 6 of 1965) hereby suspend the meeting proposed to be convened at 10.00 a.m. on 04-09-1997 to consider the motion of no-confidence referred to above having been satisfied that if such motion is carried it would go against public interest.'

The Government in exercise of its power under sub-section (1) of Section 59 of the Act is purported to have suspended the meeting proposed to be convened at 10-00 a.m. on 4-9-1997 to consider the motion of no-confidence. According to the Government, if such motion is carried, it would go against the public interest.

Legal Contentions :

The learned Counsel for the petitioners Sri D.Sudershan Reddy submits that the impugned order passed by the first respondent suspending the proposed meeting to be held on 4-9-1997 suffers from inherent lack of jurisdiction. It is the submission of the learned Counsel for the petitioners that the respondent-Government is not vested with any such power either to suspend or to postpone a meeting specifically convened for the purpose of considering no-confidence motion. It is also urged that there was no material whatsoever upon which the first respondent-Government could have acted in the manner even if it is to be assumed that the Government is vested with such power. The first respondent-Government, according to the learned Counsel for the petitioners, passed the impugned order in a casual and mechanical manner. It is the submission of the learned Counsel that the Vice-Chairman against whom a motion of no-confidence is moved belongs to Telugu Desam Party and to protect him from the no-confidence 'motion, the first respondent has chosen to pass the impugned order and on extraneous considerations.

10. The learned Advocate General appearing on behalf of Respondents 1 and 2 submits that the first respondent-Government's power is traceable to Section 59 of the Act and it precisely falls under Section 59(1)(ii)(a) of the Act. The learned Advocate General submits that such a decision was taken by the first respondent in the public interest. The learned Advocate General refers to Section 46 of the Act and submits that a written notice of intention to make a motion expressing no

confidence in the Vice-Chairman is required to be signed by such number of members including Ex-Officio members constituting not less than one half of the sanctioned strength of the Council. The sanctioned strength of the Council is 39 and it is the mandatory requirement that such no-confidence motion should be signed by atleast 20 members. Since Respondents 3 and 4 brought it to the notice of die Government that they have not signed the requisition, mere was no other alternative before die Government except to suspend die proposed meeting. The requisition given by nineteen persons alone could not meet die requirement of Law is die submission made by the learned Advocate General.

11. It is required to bear in mind the relevant provisions of die Constitution before taking up the issue in controversy. [The Constitution \(Seventy Fourth Amendment Act, 1992\)](#) introduced in Part IXA of the Constitution. The amendment has come into force with effect from 20th April, 1993. Article 243-A of the [Constitution of India](#) commands that there shall be constituted in every State a Municipal Council for a smaller urban area in accordance with the provisions of die Act. All the seats in die Municipality is required to be filled by die persons chosen by direct election from die territorial constituencies in die Municipal area and for this purpose each Municipal area is required to be divided into territorial constituencies to be known as wards. Article 243-U mandates that every Municipality unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer. 243-W speaks about the powers, authority and responsibilities of Municipalities and 243-X authorises and gives power to the Municipality to impose taxes by the Municipality. It is also required to notice that no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is proved for by or under any law made by the Legislature of the State. The constitution of the Municipality and its existence, continuance docs not depend upon the sweet will of any State Government as such. There is a constitutional mandate requiring every State to enact appropriate Legislation and constitute the Municipalities. The Legislature of every State is now required to make the law entrusting the Municipalities with necessary powers and authorities and to enable them to function as institutions of self-Government. Such law is required to contain provisions for devolutions of powers and responsibilities upon the Municipalities

and in particular with respect to (i) preparation of plans for economic development and social justice; (ii) performance of functions and implementations of schemes as may be entrusted to them and particularly in relation to matters enumerated in the XIIIth Schedule. Article 243-Y provides that the Finance Commission constituted under Article 243-Y to review the financial position of the Panchayats shall also review the financial position of the Municipalities and make recommendations of the Governor as to (a) the principles which should govern (i) the distribution between the State and the Municipalities, net proceeds of the taxes etc. leviable by the State, which may be divided between them (ii) determination of the taxes, duties etc. which may be assigned to, or appropriated by, by the Municipalities, (iii) grants-in-aid to the Municipalities from the consolidated fund of the State (b) the measures needed to improve the financial position of the Municipalities. The Governor is required to cause every recommendation made by the Commissioner together with an explanatory memorandum of accounts by the Municipalities as to the action taken thereon and to be laid before the Legislature of the State. The superintendence, directions and control of the preparation of electoral rolls, for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission constituted under and in accordance with Article 243-K. The said provisions virtually mandate the States to pass appropriate Legislation in conformity with such Constitutional provisions.

12. Whatever may have been their position and status previously, every Municipality now is instance of self-Government. It is an independent autonomous statutory body. It does not act as an agent of the State Government. It is neither a Satellite nor an appendage of the State Government. It is authorised and entrusted with duties to take independent decisions within the frame work of law enacted in the light of the Constitutional provisions referred to hereinabove. It is also required to notice that the A.P. Municipalities Act, 1955 is suitably amended to be in conformity with the Constitutional provisions. It is thus clear that the Government cannot deal with the municipalities treating them as one of their Departments. The perception if any that the Municipalities are subordinate or is required to act under the directions of the State Government needs to be dispelled.

13. Now a look at the conspicuous of the provisions of the A.P. Municipalities Act, so far as they are relevant for our present purpose. Municipality is constituted under the notification issued specifying an area as a smaller urban area under Clause (42-a) of Section 2. Section 4 speaks of the Municipal authorities charged with carrying out the provisions of this Act and they are: (a) a council; (b) a Chairperson; (c) a Commissioner; and (d) the ward committee and Section 5 mandates that there shall be constituted for each Municipality a body of members to be called the Municipal Council having authority over the Municipality. Sub-section (2) of Section 5 prescribes that the Council shall consist of the following members, namely-

(i) Such number of elected members as may be notified from time to time by the Government in the Andhra Pradesh Gazette, in accordance with such principles as may be prescribed :

Provided that the number of members to be elected in respect of each Council existing at the commencement of the Andhra Pradesh Municipal Laws (Second Amendment) Act, 1994 shall be as it stood at such commencement until such number is revised by the Government in accordance with the principles prescribed.

(ii) every member of the Legislative Assembly of the State representing a constituency of which a Municipality or a portion thereof forms part:

Provided that a Member of the Legislative Assembly representing a constituency which comprises more than one Municipality including a part of any Municipality, shall be ex-officio member of one such Municipality which he chooses, and he shall also have the right to speak in and otherwise to take part in the proceedings of any meeting of the other Councils comprised within the constituency, but shall not be entitled to vote at any such meeting;

(iii) every member of the House of the people representing a constituency of which a Municipality or a portion thereof forms part:

Provided that a member of the House of the People representing constituency which comprises more than one Municipality including a part of any municipality, shall be the member of one such Municipality which he chooses; and he shall also have the right to speak in and otherwise to take part in the proceedings of any meeting of the other Councils comprise within the constituency but shall not be entitled to vote at any such meetings;

(iv) every member of the Council of States registered as an elector within the Municipality ex-officio;

(v) persons having special knowledge or experience in municipal administration co-opted by the Municipal Council whose number shall be one in the case of a Nagar Panchayat, two in the case of a Municipality having population of less than three lakhs and three in the case of a Municipality having a population of three lakhs or more:

Provided that the member co-opted under this clause shall have the right to speak in and otherwise to take part in the meetings of Nagar Panchayat or the Municipality, as the case may be, but shall not have the right to vote;

(vi) one person belonging to minorities to be co-opted in the prescribed manner by the members specified in Clauses (i) to (iv) from among the persons who are registered voters in the Municipality and who are not less than twenty-one years of age :

Provided that the member co-opted under this clause shall have flic right to speak in and otherwise to take part in the meetings of the Nagar Panchayat or the Municipality, as the case may be, (with right to vote).

Section 23 of the Act prescribes the mode and method of electing Chairperson and it says that Chairperson shall be elected by the persons whose names appear in the electoral rolls of flic Municipality from among themselves in the manner prescribed. It also provides reservation in favour of the Backward Classes, Scheduled Caste, Scheduled Tribes and Women. Section 25 deals with the election of Vice Chairperson within fifteen days from the date of election of the

Chairperson in the manner prescribed.

14. Section 46 of the Act which is very much relevant for our present purpose requires reproduction. Section 46 of the Act prescribes as follows:

'46. Power of Council to pass motion of no confidence in Vice-Chairperson :--

(1) a motion expressing want of confidence in the Vice-Chairperson may be made in accordance with the procedure laid down in the following sub-sections.

(2) A written notice of intention to make the motion, in such form as may be specified by the Government, signed by such number of Members including Ex-officio Members as shall constitute not less than one half of the sanctioned strength of the Council, together with a copy of the proposed motion, shall be delivered in person by any two motion, shall be delivered in person by any two of the elected Members signing the notice to the District Collector in the case of special or selection grade municipality, or to the Revenue Divisional Officer in the case of any other municipality.

Explanation :--For the removal of doubts, it is hereby declared that for the purpose of this Section the expression 'sanctioned strength of the Council' shall mean the total number of Members including the ex-officio Members.

(3) The District Collector or the Revenue Divisional Officer as the case may be, shall then convene a meeting for the consideration of the motion at the municipal office on the date appointed by him which shall not be later than thirty days from the date on which the notice under subsection (2) was delivered to him. He shall give to the Members including ex-officio Members, notice of less than fifteen clear days of such meeting.

Explanation :--In computing the period of thirty days specified in this sub-section, the period during which a stay order, if any, issued by a competent Court on a petition filed against a notice under subsection (2) is in force shall be excluded

(4) The District Collector or the Revenue Divisional Officer, as the case may be, shall preside at such meeting. If within half an hour after the time appointed for the

meeting, the District Collector or Revenue Divisional Officer as the case maybe, is not present to preside at the meeting, the meeting shall stand adjourned to a date to be appointed by him under sub-section (5)

(5) If the District Collector or the Revenue Divisional Officer, as the case may be, is unable to preside at the meeting, due to the circumstances beyond his control he may, after recording his reasons in writing, adjourn the meeting to such other date as he may appoint. The date so , appointed by him shall not be later than fifteen days from the date fixed for the meeting under sub-section (3). Notice of not less than three clear days shall be given by him to the Members including ex-officio Members of the adjourned meeting.

(6) Save as provided in sub-sections (4) and (5) a meeting convened for the purpose of considering a motion under this Section shall not for any reason, be adjourned.

(7) As soon as the meeting convened under this section commences, the District Collector or the Revenue Divisional Officer as die case may be, shall read to the Council the motion for the consideration of which the meeting has been convened, and declare it to be open for debate.

(8) No debate of any motion under this Section shall be adjourned.

(9) Such debate shall automatically terminate on the expiration of two hours from the time appointed for the commencement of the meeting if it is not concluded earlier. On die conclusion of die debate or on die expiration of the said period of two hours, whichever is earlier, the motion shall be put to vote.

(10) The District Collector or the Revenue Divisional Officer as the case may be, shall not speak on the merits of die motion and he shall not be entitled to vote thereon.

(11) A copy of die minutes of the meeting together with a copy of the motion and die result of the voting thereon shall be forwarded immediately on the termination of the meeting, by die District Collector or the Revenue Divisional Officer as the case may be, to the Government.

(12) If the motion is carried with the support of majority of the strength of the Members including the ex-officio Members as on the date of the meeting, the District Collector or the Revenue Divisional Officer as the case may be, shall forthwith publish the result in the notice board at the municipal office and on such publication the Vice-chairperson, shall be deemed to have been removed with immediate effect. Any such result be final and shall not be questioned in any Court of law.

(13) If the motion is not carried by such a majority as aforesaid, or if the meeting could not be held for want of a quorum, no notice of any subsequent motion expressing want of confidence in the same Vice-chairperson shall be made until after the expiration of one year from the date of the meeting.

(14) No notice of a motion under this Section shall be made within one year of the assumption of office by a Vice-chairperson.'

Another relevant portion for the present purpose is Section 59 which deal with the Government's power to cancel or suspend resolutions and the same reads as follows :

'59. Government's power to cancel or suspend resolutions etc :--(1) The Government may, either suo motu or on representation of any Member, the Chairperson or the Commissioner by order in writing-

- (i) cancel any resolution passed, order issued, or licence or permission granted; or
- (ii) prohibit the doing of any act which is about to be done or is being done, in pursuance or under colour of this Act, if in their opinion -
 - (a) such resolution, order, licence, permission or act has not been passed, issued, granted or authorised in accordance with law; or
 - (b) such resolution, order, licence permission or act is in excess of the powers conferred by this Act or any other enactment; or
 - (c) the execution of such resolution or order, the continuance in force of such licence or permission or the doing of such act is likely to cause, financial loss to

municipality, danger to human life, health or safety or is likely to lead to a riot or breach of peace (or is against public interest):

Provided that the Government shall, before taking action under this Section on any of the grounds referred to in clauses (a) and (b), give the authority or person concerned an opportunity for explanation;

Provided further that nothing in this sub-section shall enable the Government to set aside any election which has held.

(2) If, in the opinion of the Government, immediate action is necessary on any of the grounds, referred to in clause (c) of sub-section (1), they may suspend the resolution, order, licence, permission or act, as the case may be, for such period as they think fit pending the exercise of the powers under sub-section (1).

A brief survey of the relevant provisions of the A.P. Municipalities Act would undoubtedly show that the Chairperson or the Vice-Chairperson exercise certain responsibilities conferred by the Statute. Their tenure of Office is assured. A motion of no-confidence can be moved against the Vice-Chairperson only in accordance with Section 46 of the Act. Subsection (14) of Section 46 mandates that no notice of motion under this section shall be made within one year of the assumption of office by a Vice-Chairperson. Sub-section (6) of Section 46 mandates that except in the circumstances mentioned in sub-sections (4) and (5) a meeting convened for the purpose of considering a motion of no-confidence shall not be adjourned for any reason. The debate in respect of the proposed no-confidence motion is not allowed to go on for an unlimited period and sub-section (9) of Section 46 commands that there is an automatic termination of the debate on the expiration of two hours from the time appointed for the commencement of the meeting, if the same does not conclude even earlier, the motion is required to be put to vote immediately after the debate.

15. There is no specific provision as rightly contended by the learned Counsel for the petitioners authorising the first respondent-Government to interfere with and interdict a meeting convened for the purpose of considering a motion of no-confidence. However, the learned Advocate General traces the power of the first

respondent-Government to Section 59 of the Act. Neither Section 46 nor Section 59 can be construed de hors the other provisions of the Act. The purpose for which the Act is brought into force and the scheme of the Act is to be borne in mind while interpreting Section 46 as well as Section 59 of the Act. The principle of interpretation of purposive construction is laid down by the Apex Court in S.Gopal Reddy v. State of A.P., : 1996 CriLJ3237 and it would be useful to refer to the relevant paragraph in the Judgment:

'It is a well-known rule of interpretation of statutes that the text and the context of the entire Act must be looked into while interpreting any of the expressions used in a statute. The Courts must look to the object which the statute seeks to achieve while interpreting any of the provision of the Act. A purposive approach for interpreting the Act is necessary.'

The Supreme Court held in Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd., : [1987]2SCR1 as follows:

'Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the classes of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of the statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.'

Meeting convened pursuant to a requisition to consider a motion of no-confidence is part of democratic process. No Vice-Chairperson who had lost the confidence of

the Council can be allowed to continue in office. The requirement is that at all points of time, the Vice-Chairperson should command the support of the majority of the Council. The requirement is in conformity with the principles of democracy. Second proviso to Section 59 stipulates that nothing in Section 59 shall enable the Government to set aside any election which has been held. It is settled law that except in rarest of the rare circumstances, even the Court should not interfere with the electoral process. Election as scheduled must be allowed to go on and any dispute touching upon the election is required to be settled only by way of raising an appropriate dispute within the frame work of the statute. In my considered opinion a meeting convened for the purpose of considering a motion of no-confidence also should be given the same importance and the same principle of non-interference with such process would apply. Therefore, neither the Courts nor the Government should intervene in the matter obstructing or interdicting such motions. After all, it is for the elected representative to choose their Vice-Chairperson and to remove him on losing their confidence. The ultimate test must be left to the Council itself. Interference by the Government on one or the other pretext and on flimsy grounds is not permissible. The meeting convened and to be held pursuant to requisition to consider no-confidence motion is an aspect of democratic process. It is akin to that of electoral process in the broader sense. The only difference between the election and a no-confidence motion is that a person is chosen to a public office in the election and whereas a person holding elected office is removed by way of motion of no-confidence, if successfully carried on.

16. For the aforesaid reasons, it is not possible to accept the submissions made by the learned Advocate General that Section 59(ii)(a) authorised the Government even to interdict a meeting convened to discuss no-confidence motion. The notice issued by the second respondent convening the meeting to be held on 4-9-1997 cannot be equated to that of a resolution or an order within the meaning of Section 59(1)(ii)(a) nor it is a licence, permission. Issuance of a notice pursuant to the requisition by the members of the Council by the competent authority under Section 46 cannot be equated to an act within the meaning of Section 59(1)(ii)(a) of the Act. Therefore, in my considered opinion, the first respondent-Government is not vested with the power to interdict the meeting convened to discuss motion of no-confidence. A combined reading of Sections 46 and 59 of the Act and the

Scheme of the Act would make it clear that Government is not authorised to interfere in any manner whatsoever and stop the process of the no-confidence motion. Meeting convened for such purposes cannot be suspended or adjourned. Such meeting convened for the purpose of considering the motion of no-confidence shall not be adjourned for any reason whatsoever except as provided in subsection (4) and (5) of Section 46 i.e. in the absence of the Presiding Officer to preside over such meeting convened for the purpose of discussing a motion of no-confidence. The Legislative mandate is clear that meeting convened for the consideration of no-confidence motion shall have to go on save or otherwise provided for in sub-section (4) and (5) of Section 46. For the aforesaid reasons, I express my inability to accede to the submissions made by the learned Advocate General.

17. Be that as it may, even assuming that such power is available to the first respondent-Government under Section 59 of the Act, can it be said that the impugned order is in conformity with Section 59 of the Act? Can it be said that the notice issued by the Revenue Divisional Officer convening the meeting to be held on 4-9-1997 is not in accordance with Section 46 of the Act? On what basis the first respondent had come to such a conclusion and suspended a meeting which is yet to be held? The first respondent was duty bound to put the question to itself as to why Respondents 3 and 4 have kept quite ever since 14-8-1997 to 3-9-1997 and the first respondent-Government could have got an answer for the same. There were no compelling circumstances under which the first respondent-Government could have reached the conclusion that the notice issued by the second respondent is not in conformity with Section 46 of the Act. Self-serving statements without any supporting materials in order to suite the political convenience by some members could not form the basis for interdicting the meeting convened for the purpose of considering the motion of no-confidence. Nothing could have prevented Respondents 3 and 4 to express their view during the debate in the 'meeting and nothing in law prevents them from exercising their franchise in accordance with their choice. These are the circumstances that ought to have been taken into consideration by the first respondent-Government while disposing of the representation of the respondents. The impugned order is one in the nature of an order of moment creating an irreversible situation. The records would not

show as if it was a temporary measure and some further enquiry contemplated and on the other hand, the order reads as if the proposed meeting is suspended for an indefinite period. It is rather difficult to appreciate as to how a meeting yet to take place could be suspended by the first respondent-Government.

18. It is further required to notice that the Government could not have taken action under Section 59(1)(ii)(a)(b) of the Act on any of the grounds referred to therein without giving an opportunity to the persons concerned, even if the learned Advocate General's submission is to be accepted that the Government had exercised its power under Section 59(1)(ii)(a). The same is ultra vires the proviso to Section 59 which mandates that no such order could be passed without prior notice to the, concerned person. It is true that sub-section (2) of Section 59 authorises the State Government to pass an order which is interim in its nature for such period as it may think fit pending exercise of the power under sub-section (1). But such an order can be passed only in cases falling under Clause (c) of sub-section (1) i.e., the execution of such resolution or order, the continuance in force of such licence or permission or the doing of such act is likely to cause, financial loss to municipality, danger to human life, health or safety or is likely to lead to a riot or breach of peace or is against public interest. But the operation of such an order which is interim in its nature could be only for such period, as the Government thinks fit and pending the exercise of the powers under sub-section (1). It is thus clear that the impugned action is ultra vires Section 59, even if it is to be assumed that Section 59 would apply and authorise the first respondent-Government to interdict the proceedings of a meeting convened to consider motion of no-confidence. The order could not be said to be an interim one, as the record does not disclose that the Government proposes to make any further investigation and enquiry into the matter under sub-section (1) of Section 59. Viewed from any angle, I find it difficult to sustain the impugned memo and impugned memo is accordingly set aside. The second respondent herein is accordingly directed to proceed further in the matter in accordance with law and convene the meeting to consider motion of-no-confidence pursuant to the requisition already given expressing want of confidence against the Vice-Chairperson, or Proddatur Municipality in Cuddapah District.

19. The writ petition is allowed. No order as to costs

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