

In Re: P. Raghava Reddi

In Re: P. Raghava Reddi

SooperKanoon Citation : sooperkanoon.com/427083

Court : Andhra Pradesh

Decided On : Jul-09-1974

Reported in : AIR1975AP123

Judge : S. Obul Reddi, C.J. and ;Lakshmaiah, J.

Acts : Andhra Pradesh Panchayats Samithis and Zilla Parishads Act, 1959 - Sections 33; Andhra Pradesh Panchayats Samithi and Zilla Parishad Rules - Rule 44; [Constitution of India](#)

Appeal No. : Writ Petn. No. 3716 of 1974

Appellant : In Re: P. Raghava Reddi

Advocate for Pet/Ap. : P.A. Chowdary, Adv.

Disposition : Petition dismissed

Judgement :

S. Obul Reddi, C.J.

1. As the vires of Section 33 of the Andhra Pradesh Panchayat Samithis and Zilla Parishads Act, 1959 (hereinafter referred to as the Act) was questioned before our learned brother, Venkatrama Sastry, J., he directed the writ petition to be posted before a Division Bench and that is how this petition is before us.

2. The facts necessary for determination of the question raised by Mr. Choudary viz., that Section 33 of the Act is ultra vires are these. The petitioner was elected as the president of the Panchayat Samithi Venkata-giri on 7-8-1970 for a term of five years. That election was held by secret ballot. The total membership of the Venkatagiri Gram Panchayat is 67 and that strength includes six co-opted members, of whom one is a Harijan, one Schedule tribe, two women, two general, one M. L. A., one M. L. C. and President of the Panchayat Samithi. A motion expressing want of confidence in the petitioner, who is the President of the Panchayat Samithi, was submitted to the Sub-Collector, Gudur, having jurisdiction over the Panchayat Samithi. He convened a meeting on 3-7-1974 for the purpose of considering the motion expressing want of confidence in the petitioner. Fifty of the members of the Samithi were present at that meeting. Forty-three of the members present supported the motion expressing want of confidence in the petitioner and therefore that motion was passed. The result was that he was removed from the office of the President of the Panchayat Samithi. It is this resolution which was passed by 43 members of the panchayat Samithi resulting in his removal from the office that led to the filing of the writ petition seeking a declaration that the resolution passed at that meeting is null and void. The consequential relief asked for is that respondents 2 and 6 should be directed not to act under the authority or in accordance with the said resolution of the Samithi dated 3-7-1974.

Mr. Choudary, the learned counsel appearing for the petitioner, strenuously contended that it is not open to the Presiding Officer on that occasion viz, the sub-Collector Gudur, to put the resolution to vote by show of hands without a secret ballot and that the scheme and object of the Act is to maintain the secrecy of the ballot and therefore the voting at that time by show of hands is unconstitutional and ultra vires. The other argument of the learned counsel is that out of the 43 members present on that occasion respondents 2 to 5 were disqualified and therefore their participation in supporting the resolution vitiates and invalidates the resolution passed against the petitioner. To determine whether the resolution passed against the petitioner expressing want of confidence in him is null and void it is necessary to refer to the relevant provisions of the Act and the Rules. Section 4 of the Act deals with the composition of Panchayat Samithi. The election of

members under Clause (v) of Section 4 is to be held in the prescribed, manner, that is to say the election is to be by secret ballot. Section 7 provides for election and term of the office of the President and the Vice-President of a Panchayat Samithi and filling up of vacancies. The Rules provide that the election of the President of the panchayat Samithi shall be by secret ballot. It is for the reason that the election of a member of the Samithi as also the election of the president of the Samithi is by secret ballot, Mr. Choudary contended that the provision in the rules relating to the passing of a motion of no confidence against a President or a vice-president by show of hands is ultra vires and unconstitutional.

Rule 44 of the Rules for the Motion of No-Confidence provides for the voting on the motion of no-confidence in the President or the Vice-President of a Panchayat Samithi by show of hands. The votes of tie Members present at that meeting shall be taken by the Collector or District Collector, as the case may be. This rule, according to the learned counsel, defeats the very purpose and the object of the Act to maintain the secrecy of the ballot. The scheme and the object of the Act and Rules, according to the learned counsel on the strength of the provisions relating to the election of the members and the president and the vice-president of a Panchayat Samithi, is to maintain absolute secrecy of the ballot, and when that is the object and the scheme of the Act, it could not have been the intention of the Legislature to defeat that very purpose and object by empowering the rule-making authority to make a provision in matters of no-confidence in the President or the Vice-President of a Panchayat Samithi that such a motion shall be put to open vote, that is to say, by show of hands. In support of his contention the learned counsel invited our attention to Constitutional Limitation by Cooley, Eighth Edition, page 1373, Chap. XVII. The learned author deals with the expression of popular will and the manner of exercising that right. Speaking of that right in his country, Cooley observed:

'The mode of voting in this country, at all general elections, is almost universally by ballot. A ballot may be defined to be a piece of paper or other suitable material, with the name written or printed upon it of the person to be voted for; and where the suffrages are given in this form, each of the electors in person deposits such a vote in the box, or other receptacle provided for the purpose, and kept by the

proper officers.'

'The distinguishing feature, 'as put by Cooley,' of this mode of voting is, that every voter is thus enabled to secure and preserve the most compete and inviolable secrecy in regard to the persons to whom he votes, and thus escape the influences which, under the system of oral suffrages, may be brought to bear upon him with a view to overbear and intimidate, and thus prevent the real expression of public sentiment.'

What Mr. Choudary contends is that by introducing this rule (Rule 44) of the Rules of No.-Confidence the rule-making authority has enabled men of influence, power and money to bring pressure upon the members of the Panchayat Samithi, intimidate them and thus prevent them from expressing their real opinion in a secret ballot. The learned counsel has also invited our attention to certain passages from Selected Speeches on the Constitution-II by Cecil S. Emden.

'The object is to get a House of Commons possessing the confidence of the people, chosen by the free and deliberate preference of their various constituencies, and recommended to the esteem of the nation at large by the public certainty that they have been thus preferred. This is the grand object for the attainment of which the people are called Upon to go through the harassing and costly business of a general election. If your election does not bring out the genuine, unbought, unconstrained sentiments of the voters, -- If it is not publicly known to bring out this result and no other, you might as well have no election at all: the Institution is a deceit and a failure.'

Dealing with the system, of open voting the learned author quoted the following speech:

'You hear it sometimes argued, Sir, that open voting makes the elector responsible to the public, and that secret voting removes that responsibility. But this is a mere abuse of terms, I am prepared to show you that there neither is nor can be any responsibility in the case. Responsibility, in its only legitimate meaning, can attach to nothing but to the performance of a man's duty; a man is responsible when he is liable to loss in the event of discharging his duty, and when he is protected from

loss in the event of discharging it well. Now, what is the duty of an elector? Simply to deliver his own opinion sincerely and conscientiously, -- let him be in the minority or in the majority, -- let him agree or disagree with whom he may; my neighbour and I may both discharge our electoral duty with equal fidelity, though he votes, for a Tory and I vote for a Radical; it would be wrong in him to vote as I do -- it would be wrong in me to vote as he does. Now, Sir, this being the sole duty of an elector, will any man tell me that publicity of suffrage makes him responsible for discharging it well?'

The learned counsel, Mr. Choudary, also quoted Cicero in support of his contention:

'The ballot is dear to the people, for it uncovers men's faces, and conceals their thoughts. It gives them the opportunity of doing what they h'ke, and of promising all that they are asked.'

(Forsyth's Cicero Vol. I, Page 339). In this connection it is well to remember that we are not dealing with the election of the President or the Vice-President of the Panchayat Samithi for which the Rules provide for secret ballot. We are here concerned with a resolution expressing want of confidence in the President of the Samithi. A resolution moved expressing want of confidence in a person who holds a public office, or a resolution moved to censure the Government or a Presiding Officer of a Samithi or a Gram Panchayat cannot be equated to that of an election to a statutory office in accordance with democratic set-up. The procedure for moving a motion of no-confidence is prescribed in the Act and the Rules. Section 33, as already adverted to, provides for expressing want of confidence in a President or a Vice-President of the Samithi and this section to the extent material reads:

'33. Motion of no-confidence in president or vice-president:--

(1) A motion expressing want of confidence in the president or in the vice-president of a panchayat Samithi 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 prescribed, signed by not less than one-half of the total number of members of the panchayat Samithi, together with a copy of the proposed motion shall be delivered in person, by any two of the members signing the notice, to the Collector having jurisdiction over the Panchayat Samithi.

(3) The Collector shall then convene a meeting for the consideration of the motion at the office of the Panchayat Samithi on a date appointed by him which shall not be later than thirty days from the date on which the notice under Sub-section (2) was delivered to him. He shall give to the members notice of not less than fifteen clear days of such meeting in such manner as may be prescribed.'

It is not alleged anywhere in the petition that the procedure prescribed by Section 33 has not been followed before the meeting was convened on 3-7-1974. The Rules provide that the motion of no-confidence shall be in writing addressed to the Revenue Divisional Officer or Sub-Collector having jurisdiction over the area and such a written notice was issued and the notice for convening the meeting, as required under the Rules, was also issued by the Sub-Collector in this case in the prescribed form. Such a notice was served on every member of the Panchayat Samithi. Sub-section (7) of Section 33 says that as soon as the meeting convened under this section commences, the Collector shall read to the Panchayat Samithi the motion for the consideration of which the meeting has been convened and declare it to be open for debate. No debate on the motion under this section shall be adjourned. Sub-section (9) says that such a 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 the conclusion of the debate or on the expiration of the said period of two hours, whichever is earlier, the motion shall be put to vote. Sub-section (10) says that the Collector shall not speak on the merits of the motion and he shall not be entitled to vote thereon. Under Sub-section (11) a copy of the minutes of the meeting together with a copy of the motion and the result of the voting thereon shall be forwarded forthwith on the termination of the meeting by the Collector to the Government. According to Sub-section (12) if the motion is carried with the support of not less than three-fifths of the total number of members of the Panchayat Samithi, the

Government shall, by notification, remove the president or the Vice-president, as the case may be, and the resulting vacancy in the office of the President or Vice-president shall be filled in the manner specified in Section 7 within the prescribed time.

The motion of no-confidence as provided under Section 33 (2) must be signed by not less than one-half of the total number of members of the panchayat Samithi. There is no secrecy nor is any secrecy prescribed so far as notice of intention to make a motion expressing want of confidence in the president is concerned. Sub-section (7) provides for a discussion and a debate on the motion of no-confidence. It is only after discussion and debate, which shall not last for more than two hours, that the motion is put to vote as provided in the Rules. The motion itself is in the form of a resolution. The very fact that sub-section (7) of Section 33 provides for consideration of the motion makes the intention of the Legislature very clear that such of those who had expressed their intention to give notice in writing for convening the meeting for the purpose of moving the no confidence motion should be free to express what they have to say. When a motion of no-confidence is moved, a debate takes place, some speaking for the resolution and some speaking against the resolution. A duty is cast upon those who are signatories to the motion to speak openly and come out with the reasons for their attempt to dislodge a member who has been duly elected to the office of the President. It is for the supporters of the motion to point out the acts of omission and commission of the person whom they seek to remove from office. Those who oppose the motion have a right to refute the charges and even level countercharges against those who are signatories to the no-confidence motion or those who speak in support of the motion. Therefore no secrecy is attached nor such secrecy is intended when a motion of no-confidence comes up for consideration or discussion. There is an open debate between those who are for the motion and those who are against it It is for that reason that secrecy of the ballot is waived under the Rules and open ballot is introduced. Even the notice in writing which shall be signed by not less than one-half of the total number of members of the Pancha-yat Samithi will disclose those who are against the President of the Samithi. We are therefore unable to agree with Mr. Chowdary that in the matter of expressing want of confidence in the President of the Panchayat Samithi the

voting should always be by secret ballot. We see nothing ultra vires in Section 33 or Rule 44 which goes against the object or the scheme of the Act. There is nothing unconstitutional also in not holding a secret ballot for the purpose of expressing want of confidence in a President of the Panchayat Samithi. The will of the members was ascertained by an open vote and it is one of the democratic processes or methods of ascertaining the will of the representatives and the Legislature has provided for such a process.

3. The only other point urged by the learned counsel, Mr. Choudary, is that respondents 2 to 5 should not be permitted to attend the meeting by the sub-collector. The learned counsel relied upon the objection petition which the petitioner filed before the sub-collector at the commencement of the meeting objecting to the participation of respondents 2 to 5 at that meeting. Whether respondents 2 to 5 had suffered disqualification or not is not a question which can be gone into by this court in a writ petition. It should be remembered that out of the total of fifty members present at the meeting on 3-7-1974 forty three members voted for the motion of no-confidence moved against the petitioner. If respondents 2 to 5 had suffered any disqualification the forum for assailing that is elsewhere. We therefore, see no reason to entertain this writ petition. It is accordingly dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com