

Nallamothu Ruthrani (Dr.) Vs. Govt. of A.P. Rep. by Its Principal Secretary, Municipal Administration and Urban Development Department and ors.

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SooperKanoon Citation : sooperkanoon.com/435774

Court : Andhra Pradesh

Decided On : Aug-26-2009

Reported in : 2009(5)ALT689

Judge : Goda Raghuram and ;Ramesh Ranganathan, JJ.

Acts : Andhra Pradesh Municipalities Act, 1965 - Sections 46, 46(1), 46(2) and 228; Andhra Pradesh Co-operative Societies Act, 1964 - Sections 34A(1) and 34A(2); Andhra Pradesh Panchayat Raj Act, 1994 - Sections 245(2)

Appeal No. : Writ Petition No. 23282 of 2008

Appellant : Nallamothu Ruthrani (Dr.)

Respondent : Govt. of A.P. Rep. by Its Principal Secretary, Municipal Administration and Urban Development Depart

Advocate for Def. : G.P. for Respondent Nos. 1 and 2, ;C. Kodanda Ram, Adv. for Respondent Nos. 3 and 4, ;Pinnamaneni Ramana Krishna, Adv. for Respondent No. 5 and ;B. Adinarayana Rao, Adv. for Respondent Nos. 6 to 8

Advocate for Pet/Ap. : S. Srinivas Reddy, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Goda Raghuram, J.

1. The 2nd respondent, the District Collector, Guntur addressed a notice in Proforma-II dated 13-10-2008 informing the petitioner -the Chairperson of the Ponnuru Municipal Council - that the 2nd respondent was communicated a notice of the intention to move a motion expressing 'want of confidence' in the petitioner under Section 46 of the A.P. Municipalities Act, 1965 (for short 'the Act'); that the meeting of the Municipal Council, Ponnuru, would be held on 29-08-2008 at 11-00 A.M. at the specified premises for consideration of the motion; and that a copy of the proposed motion was enclosed and signed by nineteen (19) members which having been verified by the 2nd respondent was found to be in order as regards identity of the signatories to the proposed motion. This notice dated 13-10-2008 is impeached on the sole ground that the notice of the intention to move motion received by the 2nd respondent is in transgression of the provisions of Section 46 of the Act.

2. The non-official respondents herein and some others, in all nineteen (19) councillors of the Ponnuru Municipal Council addressed the 2nd respondent in Proforma-II giving notice of the intention, as required by Section 46 of the Act, to move a motion expressing 'want of confidence' in the petitioner as Chairperson of the Municipal Council. Proforma-II contains an assertion that a copy of the motion proposed to be made is enclosed, in conformity with the statutory provision. It is however the admitted position that a separate copy of the proposed motion is not enclosed to Proforma-II notice, which was signed by the nineteen (19) representationists and addressed to the 2nd respondent. This failure to enclose a copy of the proposed motion of 'no confidence' is the basis for the petitioner's challenge.

3. Section 46(1) of the Act, to the extent relevant and material reads:

46. Motion of no confidence in Chairperson/Vice-Chairperson:-(1) A motion expressing want of confidence in the Chairperson otherwise than directly elected

or Vice-Chairperson may be made by giving a written notice of intention to move the motion, in such form as may be specified by the Government, signed not less than one half of the total number of members of the Council having right to vote, together with a copy of the proposed motion to the District Collector concerned in accordance with the procedure prescribed.

4. On a true and fair construction of the provisions of Section 46(1) of the Act, it is clear that a motion expressing 'want of confidence' may be made by giving a written notice of the intention to move the motion in a form as specified and signed by the specified number of the members of the Council with the specified qualification and is to be accompanied by a copy of the proposed motion, addressed to the District Collector, in accordance with the procedure prescribed. No procedure has been prescribed is also the admitted position in the context of the fact that the expression 'prescribed' is defined in Section 228 of the Act as to be by Rules made by the Government under the Act. There are no Rules prescribing the procedure for issuing a written notice or for enclosing a copy of the proposed motion in the address to the Collector.

5. It requires to be noticed that Proforma-I which was signed by nineteen (19) members of the Ponnuru Municipal Council does delineate clearly an intention and in uncertain terms, that the motion is one for expressing 'want of confidence' in the petitioner as Chairperson of the Municipal Council. The grievance however is limited to the transgression of the requirement of enclosing in the representation to the District Collector a copy of the motion and the failure to enclose a copy of the proposed motion in the representation to the District Collector is alleged to have vitiated the whole process.

6. The learned Counsel for the petitioner places reliance on the decisions of learned single Judges of this Court in *S. Ghouse Mohiddin v. District Collector* 1990 (1) A.W.R. 72; *Dr. Tadiboina Masthanamma v. State of A.P.* (judgment dated 22-10-2008 in W.P. No. 22934 of 2008); and the judgment dated 09-09-2008 in *B. Paatcha and Anr. v. Commissioner of Fisheries, Hyderabad* in W.P. No. 19654 of 2008.

7. The first two decisions deal with cases involving motions of 'no confidence' moved against the Vice-Chairman and Chairman respectively of Kadapa and Tenali Municipal Councils. In Ghouse Mohiddin case (supra), the learned single Judge set aside a notice issued by the District Collector (as in the present case) on the ground that a copy of the proposed motion of 'no confidence' was not enclosed to the requisition addressed to the District Collector, in violation of the provisions of Section 46(2) of the Act (as it then stood). The learned single Judge of this Court held that there are three aspects of Section 46 (2) of the Act - (a) a notice signed by the requisite members; (b) delivery of a copy of the proposed motion of 'no confidence' and (c) presenting of the notice to the District Collector by two elected councilors in person. The learned single Judge in allowing the writ petition held that these three components of Section 46(2) are mandatory requirements.

8. In Dr. Tadiboina Masthanamma case (supra) there was no discussion as to whether the provisions of Section 46 of the Act are mandatory or directory but factually a copy of the proposed motion expressing 'want of confidence' was not enclosed to the notice addressed to the Collector seeking to move the motion. The learned single Judge held in allowing the writ petition at the stage of admission held that the Proforma-II notice sent to the petitioner (by the District Collector) is not in substantial compliance of the provisions of Section 46 of the Act.

9. In B. Paatcha case (supra) the provisions of the A.P. Co-operative Societies Act, 1964 (for short 'the 1964 Act') pertaining to moving of a motion of 'no confidence' in the President or Vice-President of the committee of management of a co-operative society fell for consideration i.e., provision of Section 34A(1) and (2) of the 1964 Act. Section 34A(1) and (2) of the 1964 Act, as in the case of Section 46 of the Act, enjoin that a copy of the proposed motion shall accompany the written notice of intention to move the motion, addressed to the Registrar of the Co-operative Societies. This was not done and therefore the writ petition was allowed and the consequent notice addressed to the petitioners therein sensitizing them of the impending meeting for moving the motion of 'no confidence'; was set aside, granting liberty to the managing committee to pursue appropriate remedies, including taking steps against the petitioners.

10. On behalf of the respondents reliance is placed on the decision of the learned Division Bench of this Court in *Y. Raghava Reddy v. Govt. of A.P.* : 1999 (2) ALT 175 (D.B.). The issue arose under the A.P. Panchayat Raj Act, 1994 (for short 'the 1994 Act'). Section 245(2) of the 1994 Act also require a copy of the proposed motion for expressing 'want of confidence' to accompany the requisition for a meeting to move the motion. No such enclosure was made. Nevertheless the learned Division Bench held that in the absence of any enjoined sanctions for non-compliance with the requirements of the notice in Form-V provided by the Legislation, the notice is only 'directory' and the mere use of 'shall' cannot justify its interpretation as 'mandatory' and accordingly dismissed the appeal which was directed against the order in the writ petition dismissing the challenge to the consequent notice issued for moving the motion of 'no confidence'.

11. Section 46 of the Act while requiring written notice of an intention to move the motion expressing 'want of confidence' addressed to the District Collector posits enclosure to such notice a copy of the proposed motion but provides no sanctions for the transgression of this requirement (of enclosing a copy of the proposed motion to the notice). There is no provision which enjoins expressly or by any compelling implication the requirement to furnish a copy of the notice addressed to the District Collector and or a copy of the proposed motion for expressing 'no confidence', to the person against whom the motion is proposed. The scheme of Section 46 of the Act does not postulate either textually or by implication a requirement of recording any reasons for moving the motion of no confidence nor is there enjoined a requirement of establishing misconduct or misdemeanor of an office holder as a condition precedent to moving the motion for expressing 'want of confidence'. A motion of 'no confidence' is not treated akin to a process of impeachment from office. It is a simple majoritarian exercise. In the circumstances there appears no public interest component or a social prejudice occasioned by the failure to enclose a copy of the proposed motion as enjoined by Section 46(1) of the Act, to the written notice of an intention to move the motion expressing 'want of confidence' addressed to the Collector.

12. As pointed out in the judgment of the Supreme Court in *Rajendra Singh v. State of M.P. and Ors.* : AIR 1996 SC 2736 : 1996 (4) ALT 10 (D.N.) in considering

cases alleging violation of statutory rules and conditions, the violation of each and every provision does not furnish a legitimate ground for judicial interference. Statutory provisions may be directory or mandatory. In the case of directory provisions substantial compliance is adequate unless it is established that violation of a directory provision results in loss or prejudice to a party. Even in case of mandatory provisions interference does not follow as a matter of course. A Mandatory provision conceived in the interest of party, may be waived by that party, while a mandatory provision conceived in the public interest cannot be waived by a party. The Apex Court pointed out that wherever a complaint of violation of a mandatory provision is made, the Court should enquire in whose interest is the provision conceived. If it is not conceived in the interest of public, question of waiver and/ or acquiescence may arise subject of course to the pleadings of the parties.

13. In the case on hand from the text and context of Section 46(1) of the Act there appears no pejorative impact either to the interests of petitioner nor the public arising out of the failure to enclose a copy of the motion expressing 'want of confidence'; to the written notice of the intention to move such a motion, addressed to the District Collector.

14. For the aforesaid reasons and on the aforesaid analysis, no case is made out for interference. The writ petition is devoid of merits. The writ petition is accordingly dismissed, but in the circumstances no costs.