

P. Rajamullu and ors. Vs. Government of A.P. Rep. by Its Commissioner and Director Municipal Administration and anr.

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Court : Andhra Pradesh

Decided On : Sep-24-2008

Reported in : 2008(6)ALD627; 2008(6)ALT172

Judge : B. Seshasayana Reddy, J.

Acts : Andhra Pradesh Municipal Councils/Nagar Panchayath Co-option of the Members having Special Knowledge or Experience in Municipal Administration Rules, 1995 - Rules 3 and 5

Appeal No. : W.P. No. 5814 of 2006

Appellant : P. Rajamullu and ors.

Respondent : Government of A.P. Rep. by Its Commissioner and Director Municipal Administration and anr.

Advocate for Def. : G.P. for Municipal Admn. and; Urban Dev for Respondent No. 1 and; Radhakrishna Polisetty, S.C. for MPL for Respondent No. 2

Advocate for Pet/Ap. : G. Vidyasagar, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

B. Seshasayana Reddy, J.

1. This writ petition has been filed by the petitioners who are four in number assailing the notification dated 21-3-2006 issued by the Commissioner, Yellandu Municipality, inviting applications from the eligible persons to be co-opted as members of council.

2. The petitioners are the members of the Municipal Council of Yellandu Municipality. The Municipal Council came to be constituted and its first meeting was held on 30th September, 2005. The Commissioner, Yellandu Municipality issued notification on 21-3-2006 inviting applications for being co-opted as members of the Council. The writ petitioners challenged the Notification on the ground that the Commissioner has no power to issue a Notification after sixty days from the date of the 1st meeting of the Council appointed by the Election Authority. For better understanding the grievance of the petitioners, I deem it appropriate to refer para 7 of the writ affidavit and it reads as hereunder:

It is submitted that the Chair Person of the Municipal Council, Yellandu has addressed a letter D.O.ROC A1/1006/0, dated 8-2-2006 seeking clarification for cooption of the members having special knowledge or experience in the Municipality after the stipulated period under the Rules. The Commissioner and Director of Municipal Administration vide letter Dis. No. 3298/06/Elec-2, dated 3-3-2006 directed to take action for cooption of the persons in accordance with the A.P. Municipality/Nagar Panchayats, Co-option of the Panchayats having special knowledge Municipal Administration) Rules 1995 as amended from time to time so as to file further legal issues in the matter. Thus, the directions of the Commissioner are to follow the Rules framed in G.O. Ms. No. 146 dated 18-3-2005 for cooption of the members as submitted supra. There is no provision in the rule for cooption of the members after the expiry of 60 days. However, contrary to the rule, the second respondent Commissioner has issued notification in ROC No. C1/943/05, dated 21-3-2006 which was displayed in the notice board of the

Municipal Council on 21-3-2006 inviting applications from the eligible persons for cooption in terms of A.P. Municipal Councils, Nagar Panchayats Cooption of the Members having special knowledge or experience in Municipal Administration) Rules, 1995 within 7 days i.e. on or before 28-3-200. The impugned notification dated 21-3-2006 is in contravention of Rule 5 of the Rules framed in G.O. Ms. No. 146 M.A. &UD; dated 18-3-2005.

3. Rule nisi came to be issued on 23-3-2006 and an interim stay of all further proceedings pursuant to the impugned notice also came to be granted on the even date vide W.P.M.P. No. 7418 of 2006. The 2nd Respondent Municipality filed counter and moved W.V.M.P. No. 2135 of 2008 with a prayer to vacate the interim order, dated 23-3-2006 passed in W.P.M.P. No. 7418 of 2006. 1st Respondent also filed counter affidavit.

4. When the vacate stay petition came up for consideration, with the consent of the counsel appearing for the parties, the writ petition is taken for final disposal.

5. Sri Sagar Trivarna has sworn to the counter affidavit filed on behalf of the 2nd respondent. Circumstances under which the notification could not be issued within sixty days has been explained in paras 6 and 10 of the counter affidavit, which read as here under.

It is respectfully submitted that in reply to para 6 of the affidavit, I submit that the since the Commissioner was on leave, the Office Manager processed the File for co-option of the Members having special knowledge or experience in the Municipal Administration. The Chairperson instructed the staff to place the file before him on 27-10-2005 and he endorsed on the file to keep L.O. till his for the instructions. Subsequently, so many times the office Manager and the F.A.C. Commissioner explained the necessity of the Notification within the stipulated period. But the Chairperson warned the above staff members not to process the file till the Commissioner resumes his office for issue of Notification. Thus the delay was happened in inviting the applications for cooption of the members.

10. It is respectfully submitted that in reply to para 10 of the affidavit, I submit that in pursuance of the directions issued by the Commissioner & Director of Municipal

Administration in their Lr.No. D.Dis.3298/2006/Elec-2, dated 3-3-2006, the Commissioner, Yellandu Municipality has issued Notification inviting applications for cooption of members vide Notification No. C1-943/2005, dated 21-3-2006.

6. Sunil Sharma has sworn to the counter affidavit filed on behalf of the 1st respondent. It is stated in the counter affidavit that the delay in issuing notification was caused due to administrative reasons but not due to any bad intention. Para 3 of the counter affidavit needs to be noted and it is thus:

In reply to para 7 of the affidavit, it is a fact that the Chairperson of the Municipal Council sought a clarification from this respondent and this respondent has clarified in letter L.Di. No. 3298/06/Elections-2, dated 3-3-2006 to take immediate action for cooption of persons as per the rules so as to avoid further delay in the matter. Pursuant to the clarification issued by this respondent, the second respondent issued notification on 21-3-2006 calling applications from the eligible persons. The allegation that the impugned notification dated 21-3-2006 is in contravention of Rule 5 of the rules framed in G.O.M. No. 146 M.A. & U.D., dated 18-3-2005 is incorrect. The first council meeting was held on 30-9-2005 and there was no regular Commissioner in the Municipality. Therefore, the file could not be processed to proceed with the elections of the Cooption of the members within 60 days. In the meanwhile, the Chairman of the Municipal Council sought a clarification from the Director of Municipal Administration. Accordingly, clarification was issued and thereafter, the second respondent issued the present notification. The delay was occurred due to administrative reasons but not with any bad intention. By issuing notification beyond 60 days no loss is caused to the petitioners herein. All the petitioners who approached this Hon'ble Court are elected as Ward Members. No legal right has been infringed by virtue of the notification issued by the second respondent. The present writ petition is filed with a malafide intention to see that no co-opted member be participated in the council meeting.

7. Heard learned Counsel appearing for the petitioners and learned Government Pleader for Municipal Administration appearing for the 1st respondent and learned standing counsel appearing for the 2nd respondent.

8. Sri G. Vidya Sagar, learned Counsel appearing for the petitioners submits that any notification for co-option of members to the Council shall be within 60 days from the date of first meeting of the council and as notification impugned in the writ petition came to be issued after about six months of the date of first meeting of the Council it is contrary to the Rule 5 of the Andhra Pradesh Municipal Councils/Nagar Panchayath Co-option of the Members having Special Knowledge or Experience in Municipal Administration Rules, 1995 (herein after referred to as Co-option Rules, 1995).

9. Learned standing Counsel appearing for the 2nd respondent submits that the delay in issuing Notification has caused because of the post of the Commissioner being vacant for quite some time. A further submission has been made that if the persons of eminence are not co-opted, the very purpose of Rules 3 and 5 of the Co-option Rules, 1995 will be defeated.

10. I have gone through Rules 3 and 5 of the Cooption Rules, 1995. The object of the co-option is to provide assistance of the eminent personalities to the Council. Rules 3 and 5 reads as hereunder:

3. Persons eligible for Co-option -Qualifications: No person shall be eligible to be Co-opted as a member to the Municipal Council, unless he is:

(a) a registered voter in the Electoral Roll of the Municipal Council;

(b) a person who held office of Chairperson/Sarpanch/Member of a Municipal Council/Gram Panchayat or a combination of these offices for a total period of not less than (five years); or

(Subs. By G.O. Ms. No. 217 M.A.& U.D., dated 11-4-2000)

(c) An advocate who has served as Municipal Standing Counsel for a term of 3 years.

(d) A retired Officer who has worked in the Municipality/ Municipal Corporation/Municipal Administration Department; or

(e) Person having special knowledge in Roads and Buildings/ Water Works/ Town Planning/Public Health.

5. Procedure for Co-option of Members:

(1) The Commissioner shall within sixty 60 days from the date of first meeting of the Council to be appointed by the Election Authority, call for applications from the eligible candidates by giving wide publicity in news papers giving seven days time for submission of applications. (2) The applications received shall be scrutinized by the Municipal Commissioner within three (3) days from the last date of receipt of applications.

(3) The list of eligible applicants shall be placed before the Municipal Council at its Special meeting to be convened by the Chairperson within a fortnight from the last date of fixed for receipt of applications by giving not less than seven (7) clear days notice to the elected members including Ex.Officio members:

Provided that no business shall be transacted at the meeting unless there be present at least one half of the sanctioned strength of the Council including Ex. Officio members.

Provided further that where members could not be co-opted in the first two meetings for want of quorum, the members shall be co-opted in the third meeting even without quorum.

(4) If within half an hour after the time appointed for the Special Meeting the quorum is not present, the meeting shall stand adjourned unless all the Members present agree to wait longer.

11. Under Rule 5 of A.P. Municipal Councils/Nagar Panchayats Co-option of the Members having Special Knowledge or Experience in Municipal Administration Rules, 1995, there is an obligation on the part of the Commissioner to give notification within sixty days. It does not mean that after expiry of sixty days the Commissioner shall not give notification. I do not find any illegality or irregularity in the notification impugned in the writ petition.

Accordingly, this writ petition is dismissed. No order as to costs.

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