

*** HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

+ WRIT PETITION No.33745 OF 2017

% 29-11-2017

Chamakuri Ganga Reddy

..PETITIONER

VS.

\$ The State of Telangana, Rep.by Principal
Secretary, Department of Panchayat Raj, Secretariat,
Hyderabad.

..RESPONDENTS.

! Counsel For The Petitioner: T.Sujan Kumar

^ Counsel For Respondents: Government Pleader for Panchayat Raj
& Rural Development, Sri C.Subodh,
Government Pleader for Revenue.

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? CITATIONS :

- 1.2005 (2) ALD 316
2. 2008(6) ALD 402
3. 2009(3) Mh.L.J.



HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**WRIT PETITION No.33745 OF 2017****ORDER:**

This writ petition is filed to declare the action of the 2nd respondent in issuing the notice No.B4/7094/2017, dated 25-09-2017 along with copy of motion dated 11-09-2017 on the ground of violation of Rule 2 of Motion of No-Confidence of Upa-Sarpanch of Gram Panchayat or Vice Chairman/Chairman of Zilla Parishad as illegal and arbitrary.

The sole ground on which the impugned notice is attacked is that the delivery of 'No Confidence Motion' under Form-I to the 2nd respondent was not made by two members, who have signed the notice as envisaged under Rule 2 of the Motion of No-Confidence in Upa Sarpanch of Grampanchayat or Vice President/President of Mandal Praja Parsihad or Vice Chairman/Chairman of Zilla Parishad. Learned counsel for the petitioner, therefore, contends the impugned notice is unsustainable and is liable to be set aside.

Counter affidavit is filed by the 2nd respondent stating that ten members have personally come to the office of the Revenue Divisional Officer (R.D.O.) and gave notice of 'No-Confidence Motion' on 11-09-2017. It is also stated that on receipt of such notice, a letter was addressed to the District Panchayat Officer, (D.P.O.) Nizamabad for ascertaining the genuineness of signatures of the ward members and the D.P.O. reported that signatures of the ward members are correct and genuine. Thereafter, a notice was issued on 15-09-2017 and the same

was challenged by the petitioner in WP.No.32184 of 2017 on the ground that (15) days time gap is not maintained. The said notice was set aside by this Court vide its order dated 22-09-2017 with liberty to proceed further in accordance with law. Thereafter, the impugned notice was issued on 25-09-2017 for convening a meeting on 11-10-2017 at 11 AM.

Learned Government Pleader for Panchayat Raj submits that the 2nd respondent was satisfied with the genuineness of the signatures and the contention of the petitioner that two members signed the 'No-Confidence Motion' notice did not hand it over in-person and the same would vitiate the entire proceedings cannot be countenanced, since the members who have moved 'No-Confidence Motion' were personally present before the R.D.O. She also submits that the petitioner has challenged the earlier notice dated 15-09-2017 raising only one ground i.e. lack of (15) days time in issuing notice, as such the petitioner is estopped from raising a fresh ground in this writ petition.

Heard learned counsel for the 3rd respondent, who reiterated the averments of learned Government Pleader for Panchayat Raj and submits that Rule 3 of the Motion of No-Confidence in Upa Sarpanch of Grampanchayat or Vice President/President of Mandal Praja Parsihad or Vice Chairman/Chairman of Zilla Parishad is only directory but not mandatory and all the members, who moved 'No-Confidence Motion' were present before the 2nd respondent.

It is to be seen that in **Bandila Audi Seshamma v. Government of Andhra Pradesh**¹ this Court held as under:

“Admittedly, the said letter was enclosed to the Form-II s well as the Form-V notices and was served upon the petitioner. In the circumstances, the allegation of the petitioner that the proposed motion was not enclosed with the Form-II requisition itself is factually incorrect. Even otherwise, since admittedly in the meeting held on 03-02-2005 the motion was carried against the petitioner and 10 out of the 12 members raised their hands against the continuation of the petitioner expressing their dissent against her, I am of the view that the mere fact that the proposed motion was not in a particular form has not resulted in any prejudice to the petitioner. As held by a Division Bench of this Court in **Y.Raghava Reddy’s** case (supra) and reiterated by the Full Bench in **K.Sujatha and another, 2004 (3) ALD 1 (FB)**, the legislature has not provided that non-compliance of procedural provisions of service of notice or the form of notice would render the Vote of No Confidence invalid and the object of procedural law is only to apprise the member or the President that the Vote of No Confidence would be held on a particular date and time for consideration of No Confidence.”

In Borlakunta Kamala v. Revenue Divisional Officer², this Court held as under:

“A close look at the Rule reveals that the requirement to act in person is insisted vis-à-vis two of the members, who intend to present the notice. The Rule does not insist that the receipt of the notice must be in person by the Revenue Divisional Officer or the District Collector, as the case may be. That apart, it is for the concerned authority to satisfy himself about the method of receipt of the notice. In the instant case, the

¹ 2005(2) ALD 316

² 2008(6) ALD 402

Revenue Divisional Officer categorically stated that he has received the notice in Form-II in person. The alleged discrepancy in the initial put up on the notice in Form-II vis-à-vis the signature on Form-V cannot by itself invalidate the proceedings initiated for convening the meeting to take up no confidence motion. Further, the learned Counsel for the contesting respondents has filed the photographs, depicting that the Revenue Divisional Officer himself has received the notice in Form-II, and submits that event was also video-graphed.”

Rule 2 of the Motion of No-Confidence in Upa Sarpanch of Grampanchayat or Vice President/President of Mandal Praja Parsihad or Vice Chairman/Chairman of Zilla Parishad mandates ‘No Confidence Motion’ should be moved in Form-I. The only grievance of the petitioner is about the notice being not handed over in-person by two members, who are signatories of the notice to the 2nd respondent. However, in the counter affidavit filed by respondent No.2, it is stated that ten persons were present while presenting ‘No Confidence Motion’ proposals and signatures of the persons were verified by the D.P.O. and basing on the same, notice dated 15-09-2017 was issued. This Court has set aside the same in the earlier writ petition only on the ground that there was no time gap of (15) days in issuing the notice. Significantly, the ground now raised is not raised in the earlier writ petition and when the impugned notice was issued complying with the time gap of (15) days, the petitioner has come-up with a new ground in this writ petition. The petitioner is estopped from raising such fresh ground in the present writ petition.

This Court in **Bandila Audi Seshamma v. Government of Andhra Pradesh** (1 supra), by relying on the judgment of Full Bench of this Court in **K.Sujatha and another, 2004 (3) ALD 1 (FB)**, held that defect in form of notice would not render the vote of no confidence invalid, which is binding on this Court. In view of the same, reliance placed by the petitioner on the judgment of **Chandrakala v. Kathalu**³ is of no avail to the petitioner. As held by Full Bench, the object of giving notice, is only to apprise the Upa-Sarpanch that vote of 'No Confidence' would be held on a particular date and time for consideration of "No confidence" and in the present case, the petitioner was informed of the same and it is not alleged that any prejudice is caused to the petitioner regarding non-signing of declaration by two members, when all the members who presented the 'No Confidence Motion' were present before the R.D.O. It is only a technical plea raised by the petitioner to avoid "No Confidence Motion", which cannot be permitted.

In view of the above reasons, I do not see any reason to entertain the writ petition and accordingly, the same is dismissed. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

29-11-2017

Note:

LR copy is marked.

B/o.

Nvl

³ 2009(3) Mh.L.J.



