

HON'BLE SRI JUSTICE P.KESHAHA RAO

WRIT PETITION No.3638 of 2016

ORDER

Heard the learned counsel for the petitioner as well as the learned standing counsel appeared for the respondent No.2 and 3.

2. The Writ Petition is filed by the petitioner, seeking to declare the action of the 2nd respondent in suspending the petitioner from attending the Council meetings for a period of 2 months vide Resolution No.242 dated 03.02.2016 as illegal, arbitrary and contrary to Sec.51 of the A.P. Municipalities Act and Rules made therein and unconstitutional and consequently to set aside the same.

3. The brief facts of the case are that the petitioner was elected as Councillor from 24th ward of Narsapur Municipality on the mandate of Y.S.R. Congress Party and has been continuing as such. The General Body Meeting of the Municipal Council was held on 30.01.2016, in which the petitioner attended and participated in the business of the meeting. During the proceedings, the petitioner along with others raised various issues and appropriate resolutions were passed in the said meeting. As per rules, the minutes of the meeting dated 30.01.2016 were published and placed in the notice board of the Municipality, which shows resolution No. 228 to 239 were passed and the said minutes does not reveal any allegation or unruly behaviour and conduct of any of the councillors in the meeting held on 30.01.2016. But surprisingly, the Chairperson of the Municipality addressed a letter dated 30.01.2016 to the Commissioner, *inter alia*, contending that the petitioner/ councillor of the 24th ward, by ignoring the powers vested on the Chairperson, acted contrary to rules and regulations and created

hurdles for conducting the meeting by using un-parliamentary words and directed the Commissioner to convene the urgent General Body Meeting of the Council at 3.00 P.M. on 03.02.2016, to suspend the petitioner from attending the Council meetings. Pursuant to the same, the Commissioner proposed to convene a General Body Meeting of the Council on 02.02.2016 and placed the said subject as item No.2 in the agenda dated 02.02.2016, for which, objections were raised by 11 councillors for placing the said subject as item No.2 of the agenda, vide their letter dated 03.02.2016. Without considering the objections of the Councillors, the meeting was conducted on 03.02.2016 and a resolution was passed vide No. 242, suspending the petitioner for a period of two months from attending the Council meetings, by taking the majority into consideration, vide impugned proceedings / councillor resolution No. 242 dated 03.02.2016. Aggrieved by the same the present Writ Petition is filed.

4. Though the Writ petition is filed in the year 2016, no counter affidavit is filed on behalf of the respondents till date.

5. The learned counsel, appearing for the petitioner, would submit that the Council has got power to suspend the Councillor under Sub Section 5(b) of Section 51 of the Andhra Pradesh Municipalities Act 1965 (hereinafter called as Act). As per Section 51, there are three stages to control the conduct of the Councillors, which are enumerated under sub section 3(a) and Sub Section 4 of Section 51 of the Act. He also would contend that the power under Sub Section 5 of Section 51 can be invoked only if the Councillor repeatedly and wilfully obstructing the business of the meeting in spite of the action under Sub Section 3 and 4 of Section 51. But it cannot be invoked independently. To

support his contention, he relied upon judgment of this Court in ¹**K. Agi Reddy vs Uppal Kalan Municipal Council**. It is the case where the elected councillor for Uppal Kalan Municipality from ward No. 21, was suspended for a period of two months, under Section 5 of Section 51 of the Act. The facts in the present case are similar to the facts existing in the above said judgment. The operative portion of the judgment reads as follows:

“4. Learned Counsel for the petitioner contends that unless the petitioner was called upon to withdraw from the meeting for indecent behaviour as contemplated under Sub-section (3) (a) of Section 51 of the Act, no steps could be taken for his suspension.

5. While interpreting Sub-section (5) of Section 51 this Court in *R. Ramachandra Rao v. The Amalapuram Municipality*, 1982 ALT (NRC) 100, categorically held that in cases a Councillor disregards the authority of the Chair, or abuses the rules or otherwise persistently or wilfully obstructs the business thereof, the Chairman has to name him and then immediately put the question to the Council that the Councillor named by him should be suspended from functioning in the Council for a period not exceeding three consecutive months. Once the question is put to the Council, it is for the Council to decide either to approve the question or the suggestion as it may be called, put by the Chairman or to disapprove it. The proviso which empowers the Council to resolve to terminate the suspension at any time, also throws light upon the meaning and intent behind Clause (b). It is for the Council to resolve or to decide whether to suspend such member, or not, and if so, for what period.”

6. The learned standing counsel appearing for the 2nd and 3rd respondents, relying on the language employed under Section 51, fairly concedes that the Chair Person shall in a meeting of the Council, forthwith put the question that the particular member by his name be suspended from functioning in the Council, as such for a period not exceeding three consecutive months, reckoned from the date of the meeting.

7. From the perusal of the record, the narrow issue that is involved in the present writ petition is whether the impugned proceedings dated

¹ 2004(2) ALT 279

03.02.2016, are in compliance with Section 51 of the Act. For the sake of convenience, Section 51 of Act reads as under:

“51. Presidency of council and of Chairperson:- (1) (a) Every meeting of the council shall be presided over by the Chairperson; in his absence by the Vice –Chairperson and in the absence of both the Chairperson and the Vice-Chairperson by a member included in the panel of temporary Chairpersons prepared in the manner specified in clause (b). Where no such temporary Chairperson is also present and if there is quorum, one of its members may be chosen by the meeting to preside for the occasion.

(b) At the first meeting in every year, of the council, the Chairperson may nominate from amongst the elected members a panel of not more than four temporary Chairpersons, any one of whom may preside at any meeting of the Council in the absence of the Chairperson and the Vice-Chairperson in the order in which they are nominated in the panel. The panel of temporary Chairmen so nominated shall remain in force until a new panel of temporary Chairmen is nominated.

(2) The Chairperson shall preserve order and shall decide all points of order arising at or in connection with meetings. There shall be no discussion on any point of order and the decision of the Chairperson on any point of order shall, save as otherwise expressly provided in this Act, be final.

(3) (a) Where the conduct of a member is in the opinion of the Chairperson disorderly, he may direct that such member shall withdraw from the meeting of the council and such member shall thereupon withdraw and shall not be allowed to attend for the remainder of the day's meeting.

(b) If any member who has been ordered to withdraw, continues to remain in the meeting, the Chairperson may take steps to cause him to be removed.

(4) The Chairperson may, in the case of grave disorder arising in any meeting, suspend the meeting for a period not exceeding three days.

(5) (a) The Chairperson may, if he deems it necessary, name a member who disregards the authority of the Chair or abuses the rules bye-laws or regulations of the council by persistently and wilfully obstructing the business thereof.

(b) If a member is so named by the Chairperson, the Chairperson shall at a meeting of the council forthwith put the question that the member (naming him) be suspended from functioning in the council as such for a period not exceeding three consecutive months reckoned from the date of that meeting:

Provided that the council may, at any time resolve that such suspension be terminated.

(c) A member suspended under this Sub-section shall forthwith withdraw from the precincts of the council. “

8. From the perusal of the same, under section 3 (a) of Section 51 of the Act, unless the petitioner was called upon to withdraw from

meeting for indecent behaviour, no steps could be taken for his suspension.

9. While interpreting Sub Section 5 of Section 51 of the Act, this Court in ²**R. Ramachandra Rao v. The Amalapuram Municipality**, held that “in cases where a Councillor disregards the authority of the Chair or abused the rules or repeatedly or wilfully obstructs the business thereof, the Chairperson has to name him and then immediately put the question to the Council that the Councillor, so named, by him could be suspended for functioning in the Council for a period not exceeding three consecutive meetings. Once the question is put to the Council, it is for the Council to decide either to approve or disapprove it”.

10. Similarly, this Court in ³**Hanumanth Rao Vs. Government of Andhra Pradesh** held that :

action under Section 51(5) would arise only when the erring Councillors who were very much present at the meeting are found to be persistently and wilfully obstructing the business of the Council. Erring member is prerequisite under Section 51(5) (a) of the Act. The Chairman, then put the question of suspension to the vote of the Council and the Council by a majority resolved to suspend the petitioners for consecutive months reckoned from the date of the meeting and then only the requirements of Section 51(5)(b) will be satisfied.

11. After considering all the aspects, this Court in the above said judgment was pleased to observe that the basic ingredients for invoking sub section 5 of Section 51 of the Act is that the resolution should indicate the naming of the person and immediately put the

² 1982 ALT (NRC) 100

³ 1984 (1) ALT NRC 71

question to the council, stating that the councillor named by him should be suspended by the council. In the absence of any one of the same, the impugned proceedings passed by the Commissioner cannot be sustained.

12. In the case on hand, the General Body Meeting of the Municipal Council was held on 30.01.2016. In the said meeting the petitioner has attended and participated in the proceedings. As per the Rules, the minutes of the meeting dated 30.01.2016 were published and placed in the notice board of the Municipality, indicating that the resolution No. 228 to 239 were passed. The said resolutions will not indicate any allegations or unruly behaviour and conduct of the petitioner in the meeting held on 30.01.2016. However, the Chairperson addressed a letter dated 30.01.2016 to the Commissioner, stating that the petitioner, being the councillor of the 24th ward, acted contrary to the procedure as contemplated under Section 51 of the Act. Pursuant to the said letter the Commissioner convened an urgent General Body Meeting of the council on 03.02.2016 at 3 P.M. In the said meeting, objections were raised by the 11 councillors. However, without considering the objections the petitioner herein was suspended for a period of two months from attending the council meeting, by taking majority into consideration, vide resolution No. 242, dated 03.02.2016. From the above, it is clear that the procedure followed by the respondents 2 and 3 is contrary to the mandate of Section 51 of the Andhra Pradesh Municipality Act 1965. In fact, as per Section 51 of the Act, initially, the offending councillor should be named and thereafter it should be moved in the very same meeting in which the said alleged miss-behaviour of the member was alleged, but not on subsequent date. Therefore, looking into the facts and circumstances of this case,

this Court is of the opinion that the impugned orders passed in the present Writ Petition are contrary to the mandatory procedure as contemplated under Section 51 of the Act and the same are liable to be set aside.

13. Accordingly, the Writ Petition is allowed, by setting aside the impugned Resolution No. 242 dated 03.02.2016, suspending the petitioner from attending the council meetings for a period of 2 months. However, there shall be no order as to costs.

14. The Miscellaneous petitions pending, if any, shall stand closed.

Dated: 23.04.2018

JR



P. KESHA RAO, J

HON'BLE SRI JUSTICE P.KESHA VA RAO

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Dated: 23.04.2018

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