

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.25067 of 2018

ORDER:

Heard learned counsel for the petitioner and the learned Advocate General for the State of Telangana appearing for the respondents, apart from perusing the material on record.

According to the petitioner, she is the elected Chairperson of Bhuvanagiri Municipal Council. In the present Writ Petition, challenge is to the notice of No Confidence, dated 07.07.2018, issued by the District Collector, Yadadri Bhuvanagiri District-first respondent herein.

It is the contention of the learned counsel for the petitioner that, as there is no clear fifteen days period between the date of service of notice and the proposed date of meeting, the impugned notice is liable to be set aside, in view of the provisions of Section 46 (2) of the Telangana State Municipalities Act, 1965 (for brevity, 'the Act') r/w Rule 5 of the Municipalities (Motion of No-Confidence in Chair Person/Vice Chair Person) Rules, 2008, notified vide G.O.Ms.No.835 Municipal Administration and Urban Department, dated 05.12.2008. It is the further submission of the learned counsel that the public holidays, namely, Sundays and Second Saturdays should also be excluded for computing the said period of fifteen days.

On the contrary, it is maintained by the learned Advocate General that there is neither illegality nor there exists any procedural infirmity nor even there are any lapses in the impugned action and, in the absence of the same, the impugned action is not amenable for any judicial review, under Article 226 of the Constitution of India. In

elaboration he further contends that there are clear fifteen days even if the date of service of notice is excluded. It is further submitted by the learned Advocate General that the impugned action is strictly in accordance with the Act and the Rules.

In the above background, now the issue that emerges for consideration before this Court is:

“Whether the impugned action is in accordance with the Act and the Rules and whether the petitioner is entitled to any relief under Article 226 of the Constitution of India?”.

The provision of law, which is germane and relevant for the purpose of resolving the issue in the present Writ Petition, is Section 46 (2) of the Act. Section 46 of the Act deals with the motion of No Confidence of Chair Person/Vice-Chair Person. Sub-Section 2 of Section 46 of the Act reads as under:

“Section 46 (2) of the Act: A written notice of intention to make the motion, in such form as may be specified by the Government, signed by such number of members, chairperson and the Ex-officio members as shall constitute not less than one half of the sanctioned strength of the councils, together with a copy of the proposed motion, shall be delivered in person by any two of the elected members signing the notice to the District Collector in the case of special or selection grade municipality, or to the Revenue Divisional Officer in the case of any other municipality”.

It is very much evident from a reading of the above said provision of law that there should be a clear gap of fifteen days, excluding the date of notice and the date of proposed meeting. As per the above provision of law, the date of notice and the date of meeting need to be deducted/excluded while computing the said period. In

the instant case, the impugned notice is dated 07.07.2018 and, admittedly, the petitioner herein received the said notice on 08.07.2018 and the meeting for considering the motion of 'No Confidence' is scheduled on 24.07.2018. As per the above mentioned provision of law the dates of notice and the date of meeting are liable to be excluded. If they are excluded, there is clear fifteen days time. In this context, learned counsel for the petitioner has placed on record an order of this Court, passed in W.P.No.19729 of 2002, dated 03.01.2003, wherein this Court, by deducting the date on which service was effected also, held that the impugned action therein was illegal. In the instant case, even if the date of service is not taken into consideration, there would be clear fifteen days time. Neither the rules nor the above said provision of law stipulate that the public holidays, such as Sundays and Second Saturdays are also required to be excluded/deducted while computing the said period. When the language of the statute is very much clear, this Court does not find any merit in the contention, advanced on behalf of the petitioner herein, that the public holidays are also required to be deducted. Therefore, this Court does not find any merit in the Writ Petition.

Accordingly, Writ Petition is dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, shall stand closed.

20th July, 2018
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A.V. SSHA SAI, J