

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.28384 OF 2018

Date: 26.12.2018

Between:

Smt. Ramaram Sujatha, w/o. late Bala Narsimha,
Aged 43 years, occu: MPP, Keesara, R/o.H.No.1-173
Backside of SBI Bank, Keesara village and mandal,
Medchal-Malkajgiri district.

....Petitioner

and

The State of Telangana, rep.by its Principal Secretary,
Panchayat Raj and Rural Development Department,
Secretariat, Hyderabad and others.

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.28384 OF 2018

ORDER:

In the elections held to the local bodies in the year 2014, petitioner was elected as Mandal Parishad Territorial Constituency (MPTC) Member of Bogaram in Keesara Mandal under SC (General) category. MPTC Members elected petitioner as President of Mandal Praja Parishad of Keesara Mandal. He is holding the said Office as on today. Majority of the Members of Mandal Praja Parishad, vide their notice dated 13.07.2018, requested the Revenue Divisional Officer to convene meeting of the Mandal Praja Parishath to consider the proposed motion of no confidence against the petitioner. In response thereof, the Revenue Divisional Officer issued notice in Form-V dated 02.08.2018, served on the petitioner informing the MPTC Members that meeting of the Mandal Praja Parishath is convened on 28.08.2018 to consider the motion of no confidence. In this writ petition, petitioner challenges the said notice.

2. Heard Sri B.Chandrasen Reddy learned counsel for petitioner, learned Government Pleader for respondents 1 to 4, learned senior counsel Sri K.Ramakrishna Reddy appearing for Sri H.Venugopal for respondents 5 to 11, 13 to 17 and 19, and Sri T.Ajay Kumar Goud learned counsel for respondents 12 and 18.

3. The only issue for consideration is whether the notice impugned is vitiated on the ground that there cannot be successive notices of motion of no confidence.

4. According to the learned counsel for petitioner, on 13.07.2018, 15 MPTC Members issued notice expressing their intention to move motion of no confidence for the first time and on 18.07.2018 they moved another motion of no confidence. By order dated 30.07.2018, the Revenue Divisional Officer rejected the said notices. By placing reliance on second proviso appended to Rules 2 of Rules relating to motion of no confidence in the Upa-Sarpanch of Gram Panchayat or President/Vice-President of Mandal Parishad or Chairman/Vice-chairman of Zilla Praja Parishad notified vide G.O.Ms.No.200 Panchayat Raj and Rural Development (Manual-II) Department dated 29.04.1998 (for short 'the Rules'), he would submit that second notice to hold meeting to consider motion of no confidence is valid and, therefore, the present notice is *ex facie* illegal and without jurisdiction and competence and is liable to be set aside. In support of his contention, learned counsel for petitioner placed reliance on the decision of Division Bench of this Court in **Torlakonda Mangamma v. Government of Andhra Pradesh and others**¹.

5. *Per contra*, learned senior counsel Sri K. Ramakrishna Reddy would submit that earlier notice to move motion of no confidence was rejected on technical ground i.e., signatures of some of the members appended to the notice are not tallying with the specimen signatures available on record with the Mandal Praja Parishad and it does not meet the requirement of Rule 2 of the Rules, and would submit that as rejection was on technical grounds, but not on merits, the second proviso appended to Rule 2 is not attracted to the present notice of motion of no confidence and, therefore, it is

¹ 2011 (4) ALD 123 (DB)

not vitiated on that ground. In support of said contention, learned senior counsel placed reliance on the following decisions:

i) **Tiparthy Chandra Mouli v. Government of Andhra Pradesh and others**²;

ii) **Relangi Veera Venkata Satyanarayana v. Government of A.P., rep.by its principal Secretary, Panchayat Raj and Rural Development Department**³; and

iii) **Alusani Mohan Kumar v. District Collector, Karimnagar District and others**⁴.

6. Every Mandal Praja Parishad is headed by the President elected by the majority of the Members of Mandal Praja Parishad. The tenure of the President of Mandal Praja Parishad is five years or till he/she enjoys the confidence of majority members of the Mandal Praja Parishad. If the MPTC Members are not satisfied with the performance or otherwise conduct of the President, it is open to them to move notice of motion of no confidence and by resolution of majority members, he/she can be removed from the Office of President. Section 263 of the Telangana Panchayat Raj Act, 2018 (Act, 2018) (which is analogous to the Section 245 of Andhra Pradesh Panchayat Raj Act, 1994) enables the MPTC members to express no confidence in the sitting President, and to remove him from the Office.

7. Section 263 of the Act, 2018 to the extent relevant reads as under:

S. 263. (1) A motion expressing want of confidence in the President or Vice-President or Chairperson or Vice-Chairperson may be made by giving a written notice of

² 1998 (1) ALD 431

³ 2008 LawSuit (AP) 482

⁴ 2008 (6) ALD (NOC 69)

intention to move the motion in such form and to such authority as may be prescribed, signed by not less than one half of the total number of members of Mandal Praja Parishad or as the case may be the Zilla Praja Parishad and further action on such notice shall be taken in accordance with the procedure prescribed:

Provided that no notice of motion under this section shall be made within four years of the date of assumption of office by the person against whom the motion is sought to be moved;

Provided further that no such notice shall be made against the same person more than once during his term of office.

8. The same provision is imported into Rule 2 of the Rules. It reads:

“2. A notice of the intention to make the motion shall be made in Form-I, in Form-II and in Form-III annexed to these rules either in English or in Telugu or in Urdu language, signed by not less than one-half of the total number of members of the Gram Panchayat, (Mandal Praja Parishad) or Zilla Praja Parishad as the case may be, with a copy of the proposed motion, and shall be delivered in person by any two members who signed such notice, to the Revenue Divisional Officer, Sub-collector or Assistant Collector, as the case may be, having jurisdiction in the case of a Gram Panchayat; or President and Vice-President of a (Mandal Praja Parishad); or to the District Collector in the case of Chairman and Vice-Chairman of (Zilla Praja Parishad) as the case may be;

Provided that no notice of motion under this rule shall be made within four years of the date of assumption of office by the person against whom the motion is sought to be moved;

Provided further that no such notice shall be made against the same person more than once during his term of office.”

9. As can be seen from the extracted provision, to move motion of no confidence; 1) there must be written notice of intention to

move the motion in the form prescribed and to request to convene meeting of the Mandal Praja Parishad (Form-II); 2) such notice must be signed by not less than one-half of the total number of members of the Mandal Praja Parishad; and 3) such notice must be served on the Revenue Divisional Officer. In two provisos appended to Section 263, restrictions are imposed on moving motion of no confidence. As per the first proviso, motion of no confidence cannot be moved for the first four years from the date of assumption of Office of the President of the Mandal Praja Parishad and as per the second proviso, no such notice should be made on more than one occasion against same person during his term of office. Subject to these two restrictions, it is permissible to the MPTC members to move motion of no confidence and as and when such notice is served on the Revenue Divisional Officer, it is his bounden duty to convene meeting of the Mandal Praja Parishad to consider the said motion of no confidence as Rules regulate the procedure and prescribe forms, in which such notice can be made and notice convening of the meeting.

10. On a bare reading of Section 263 of the Act, 2018, object and overall scheme of strengthening local bodies, it is manifest that restriction imposed by the second proviso is to ensure that President discharges his responsibilities unhindered by repeated threats or arm twisting tactics by the disgruntled members of Mandal Praja Parishad to pressurize President to yield to their demands, and to allow the incumbent President to complete his tenure once he successfully overcomes the objection of members on his continuation and wins the confidence of the house. In other words, the section envisages that if motion of no confidence was

unsuccessful, the President of the Mandal Praja Parishad should be allowed to complete his tenure.

11. As noted above, to convene meeting of Mandal Praja Parishad to consider motion of no confidence, notice must comply the mandatory conditions noted above. In other words, to attract second proviso to Section 263 of the Act, a proper no confidence motion should be proposed and proper notice be taken out on the Revenue Divisional Officer. Once notice in compliance of the provision in Section 263(1) of the Act, 2018 is served on the Revenue divisional Officer, he has no discretion to reject such notice nor can he deny holding of the meeting of the Mandal Praja Parishad. Thus, what is required to be seen is whether proper notice was taken out and motion was placed before the Mandal Praja Parishad for consideration. To wit, the cycle must be completed to attract second proviso to Section 263(1) of the Act, 2018. In the case on hand, as it is clear from the reading of the order of the Revenue Divisional Officer, dated 30.07.2018, he rejected the notice served on him on the ground that signatures of some of the members did not tally with the specimen signatures available with him and, therefore, it was not in compliance of requirements of Rule 2 of the Rules. Thus, the earlier notices did not clear the desk of the Revenue Divisional Officer and was not placed for consideration by the Mandal Praja Parishad. In other words, it was not a valid notice in law.

12. The issue before the Division Bench in **Torlakonda Mangamma** was, whether third notice of motion of no confidence was maintainable. Reading of the facts noted by the Division

Bench in paragraph-3 of the judgment would disclose that first notice of motion of no confidence was moved before the expiry of four years of tenure of President of Mandal Praja Parishad. On 13.07.2010 notice was issued in Form-V informing the petitioner that meeting is convened on the said date to consider motion of no confidence. W.P.No.17903 of 2010 was moved challenging the said notice and the same was disposed of on 08.10.2010 setting aside the notice, granting liberty to the respondents therein to initiate fresh steps for moving no confidence motion. It also appears, on 22.01.2010, representation was submitted against petitioner, but the same failed. For the third time, representation was submitted on 27.10.2010, in response to which notice was issued on 28.10.2010 convening the meeting on 16.11.2010. This notice was challenged primarily on the ground that successive notices of motion of no confidence are not maintainable. The Division Bench noticed that as the notice dated 28.10.2018 in Form-V was issued for the third time, in view of second proviso to Section 245 of the A.P.Panchayat Raj Act, 1994, the same is not sustainable and accordingly the said notice was set aside. The said decision do not come to the aid of petitioner as the facts in the present case are different from the facts in the said case noted above. In the instant case, motion of no confidence was not placed before the Mandal Praja Parishad on the first occasion as sought to be contended, but was rejected on the technical ground that signatures of some of the members, who signed the notices, were not tallying with the signatures available with the competent authority, and was thus not a valid notice.

13. In **Tiparthy Chandra Mouli**, learned single Judge of this Court, Justice J.Chelameswar, as he then was, considered identical issue as in this case. The first notice of motion of no confidence issued on 21.03.1997 was rejected by the competent authority on the same day. Later, one of the members sought to move another no confidence motion. Consequent thereon, notice convening meeting of Mandal Praja Parishad to consider motion of no confidence was issued on 30.03.1997 fixing the date of meeting as 15.04.1997. The said notice of motion of no confidence was challenged before the Government. The Government stayed the order of competent authority on the ground that 15 days time was not maintained between the date of service of notice on the petitioner therein and the date of convening of meeting. However, Government granted liberty to the competent authority to re-examine the entire issue and take necessary action. Thereupon, on 15.04.1997 notice was issued in Form-V calling for the meeting on 05.05.1997 to consider the motion of no confidence. 15.04.1997 notice was challenged before this Court. This Court observed as under:

“15. The notice of intention contemplated under Section 245 may reach its logical end or may not, depending on the facts whether the notice does comply with various stipulations made in the said Section or not. Such being the case, a defective notice of intention to move No Confidence Motion moved once would enable the incumbent of the Office to continue for the full term-irrespective of the fact whether he enjoys the confidence of the Body which he is expected to enjoy under the provisions of the Act, which according to me is certainly not the intention of the Legislature. One may imagine the situation, in a given case, where the incumbent of the office at a given point of time enjoying the confidence of the Body, may himself engineer a

defective notice of intention to move No Confidence Motion. Once such notice fails in view of the defect, the incumbent would continue to hold the office for the entire period notwithstanding the fact that he might lose the confidence of the Body subsequently. This would be an absurdity.”

14. The said decision was followed in **Relangi Veera Venkata Satyanarayana** and **Alusani Mohan Kumar**. Thus consistently this Court has taken the view that second proviso appended to Section 263 of the Act, 2018 is attracted only if the first notice of motion of no confidence was validly presented and not otherwise.

15. In the instant case also, first round of notices of motion of no confidence were not validly presented as signatures of some of the members appended to the notices did not tally with the specimen signatures available with the competent authority and, therefore, rejected the said notices on the technical ground. It did not complete its course as required by the statutory scheme. It was not a notice in the eye of law. Thus, I do not see any illegality in the notice of motion of no confidence impugned in the present writ petition warranting interference by this Court. Writ Petition is accordingly dismissed. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 26.12.2018
kkm

HONOURABLE SRI JUSTICE P.NAVEEN RAO



WRIT PETITION NO.28384 OF 2018

Date: 26.12.2018

kkm