

* THE HONOURABLE SRI JUSTICE P.NAVEEN RAO

+WRIT PETITION No. 38319 of 2018

%26.10.2018

Smt Velpula Prasanthi, W/o Ramesh Babu,
Aged about 30 years, Occ: Mandal President,
Kanchikacherla Mandal Praja Parishad,
R/o Keesara Village, Kanchikacherla Mandal,
Krishna District.

...Petitioner

Vs.

\$The State of Andhra Pradesh, rep. by its Principal
Secretary, Panchayat Raj and Rural Development
Department, A.P. Secretariat, Velagapudi, Amaravathi,
Guntur District & others.

...Respondents

!Counsel for the petitioner : Sri Sashibhushan Rao
Counsel for the Respondent Nos. 1 & 2 : G.P. for Panchayat Raj
Counsel for respondent No. 3 : G.P. for Revenue
Counsel for respondent No. 4 : Sri G Simhadri
Counsel for respondent No.5 : Sri C.V.R. Rudraprasad

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> Head Note:

? Cases referred:

2006 (4) ALD 170

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION No. 38319 of 2018

Between :

Smt Velpula Prasanthi, W/o Ramesh Babu,
Aged about 30 years, Occ: Mandal President,
Kanchikacherla Mandal Praja Parishad,
R/o Keesara Village, Kanchikacherla Mandal,
Krishna District.

...Petitioner

And

The State of Andhra Pradesh, rep. by its Principal
Secretary, Panchayat Raj and Rural Development
Department, A.P. Secretariat, Velagapudi, Amaravathi,
Guntur District & others.

...Respondents

JUDGMENT PRONOUNCED ON : 26.10.2018

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may :
Be allowed to see the Judgments ? :YES
2. Whether the copies of judgment may be marked :
To Law Reporters/Journals : YES
3. Whether Their Ladyship/Lordship wish to :
See fair Copy of the Judgment ? :NO

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 38319 of 2018

Date : 26.10.2018

Between:

Smt Velpula Prasanthi, W/o Ramesh Babu,
Aged about 30 years, Occ: Mandal President,
Kanchikacherla Mandal Praja Parishad,
R/o Keesara Village, Kanchikacherla Mandal,
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Department, A.P. Secretariat, Velagapudi, Amaravathi,
Guntur District & others.

...Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION NO.38319 OF 2018

ORAL ORDER:

In the elections conducted in June 2014 to the Kanchikacherla Mandal parishad, petitioner was elected as President. On 7.9.2018, 14 Mandal Parishad Territorial Constituency Members moved motion of no confidence against the petitioner. Responding to the said motion of no confidence, third respondent/Revenue Divisional Officer being competent authority, issued notice in Form-V, which was served on the petitioner on 12.9.2018, informing the petitioner about convening of meeting of the Mandal Praja Parishad to consider the motion of no confidence on 25.9.2018 at 10.30 AM. Aggrieved by the said notice in Form-V, petitioner filed W.P.No.33345 of 2018. Learned single Judge of this Court by order dated 17.9.2018 made in I.A. No.1 of 2018 holding that notice did not comply 15 days time required between date of issuance of Form-V notice and the date on which meeting was scheduled, whereas, said period is mandatory, granted interim direction staying all further proceedings pursuant to Form-V notice dated 10.09.2018.

2. Territorial Constituency Member by name Maganti Pulla Rao preferred W.A.No.1326 of 2018 challenging the interim order of the learned single Judge. Division Bench of this Court heard and by order dated 05.10.2018 disposed of the Writ Appeal and Writ Petition. Holding that the notice did not comply the minimum time required between the date of notice in Form-V and date of convening of meeting of Mandal Praja Parishad to consider the motion of no confidence, the Form-V notice issued was set aside.

However, liberty was granted to the competent authority to act on the representation given against the writ petitioner in accordance with law as expeditiously as possible.

3. Pursuant to the disposal of the Writ Appeal and Writ Petition, Revenue Divisional Officer issued fresh Form-V notice dated 11.10.2018 served on petitioner on 12.10.2018 fixing 31.10.2018 as date to conduct Mandal Praja Parishad meeting to consider the no confidence motion resolution at 10.30 AM. This notice is challenged in this writ petition.

4. Heard learned counsel for petitioner, learned counsel representing 5th respondent and Government Pleader.

5. According to learned counsel for petitioner, Rule 3 of "Rules Relating to Motion of No-confidence in Upa-Sarpanch of Gram Panchayat or Vice President/President of Mandal Parishad or Vice-Chairperson/Chairperson of Zilla Parishad" notified vide G.O.Ms.No.200, P.R & R.D (Mandal-I) Dated 28.04.1998 prescribes an outer limit of 30 days to consider the no confidence motion. He would submit that by the time notice in Form-V to convene Mandal Praja Parishad meeting was served on the petitioner, one month period has lapsed, therefore the present notice is not maintainable. He would submit that while disposing of the Writ Appeal and Writ Petition, learned Division Bench granted liberty to Revenue Divisional Officer to act on the representation given against the writ petitioner in accordance with law. Such consideration can be as per Rule 3 of the Rules, which rule prescribes outer limit of 30 days and the motion of no confidence, cannot be considered after

expiry of 30 days and, therefore, present no confidence motion notice is not valid in law.

6. In support of his contention, learned counsel for petitioner placed reliance on the decision of this Court in **Kamisetty Narayana Murthy Vs. Revenue Divisional Officer, Eluru, West Godavari District and others**¹.

7. *Per contra*, learned counsel for 5th respondent would submit that as per proviso appended to Rule 3 of Rules, 30 days time prescribed in the main proviso has no application. As there was stay on conducting of special sessions to consider motion of no confidence after the vacation of stay, further proceedings can be taken up within 30 days from the date of intimation of vacation of stay and the notice in Form-V is issued within the time prescribed therein and, therefore, Form-V notice is not vitiated on that ground.

8. The facts relevant for consideration are not in dispute. The only issue for consideration is whether decision to convene meeting of Mandal Praja Parishad on 31.10.2018 to consider motion of no confidence against President is valid ?

9. Mandal Praja Parishad is democratically elected body comprising members representing respective territorial constituencies. One of them is elected as President. It is permissible to members of Mandal Praja Parishad to express no confidence in the President. A President can be removed from his office if majority of the members of Mandal Praja Parishad vote

¹ 2006 (4) ALD 170

against him. Section 245 of the Panchayat Raj Act, 1994 enables members to move motion expressing want of confidence in the President. Rules notified vide G.O.Ms.No.200 dated 28.04.1998 regulate the issue of motion of no confidence. However, to understand the scope of these rules, it must be remembered that dissent is essential component of democratic institution and if members of the Mandal Praja Parishad have serious grievance against continuation of incumbent as President their opinion/will cannot be suppressed by technical plea and rules must be understood in the light of overarching provision in Section 245 of the Act, which vests power of expression of no confidence against President by members and democratic process.

10. Rules notified vide G.O.Ms No. 200 dated 28.4.1998 regulate issues of motion of no confidence. One half or more members of the Mandal Praja Parishad may move motion of no confidence against the President. Said members should inform the Sub-Collector, being competent authority, their intention to move motion of no confidence against the President and to request him to convene special session of Mandal Praja Parishad. Rule 2 of the Rules prescribes procedure as to when and how such request can be made.

11. To appreciate the respective contentions, it is necessary to consider the scope of Rule 3 of the Rules. Rule 3 of the Rules reads as under:

“Rule-3. The concerned officer specified in Rule 2 (hereinafter in this rule referred to as said officer) shall then convene and preside over a meeting for the consideration of the motion at the office of a Gram Panchayat, or at the Mandal Parishad, or at the Zilla Parishad, as the case may be, **on a date appointed by him which shall not later**

than thirty days from the date on which the notice under Rule 2 was delivered to him. He shall give to every member of Gram Panchayat, Mandal Parishad or Zilla Parishad as the case may be the notice of not less than fifteen clear days excluding the date of the notice and the date of the proposed meeting, of such meeting in Form-IV, in Form-V or in Form -VI annexed to these rules either in English or in Telugu or in Urdu language, whichever is applicable. Every such notice shall be delivered as specified below, namely:-

- (a) by giving or tendering such notice to such member, or
- (b) if such member is not found, by leaving such notice at his last known place of residence or business or by giving or tendering the same to some adult member or servant of his family; or
- (c) if such member does not reside in the Gram Panchayat area or Mandal Parishad area, or within the District and if his address is known to the District Panchayat Officer/ Chief Executive Authority/ Collector or the Sarpanch of the Gram Panchayat to be elsewhere, by sending the same to him through registered post with acknowledgment due; or
- (d) if none of the means aforesaid is available or if the persons referred to in clauses (a) and (b) refuse to receive the notice, by affixing the same at some conspicuous part of his place of residence or business:

Provided that where the holding of such meeting is stayed by an order of a Court, it shall be adjourned, and the said officer shall hold the adjourned meeting on a date not later than thirty days from the date on which he received the intimation about the vacation of stay and after giving to the members, a notice of not less than fifteen clear days excluding the date of the notice and the date of the proposed meeting of such adjourned meeting.”

12. Rule 3 regulates the procedure to be followed by the competent authority after he receives the request. There are two important time lines required to be observed by competent authority. First, the competent authority must convene the special session of Mandal Praja Parishad within 30 days of receipt of request by him; and secondly, when he convenes the meeting, he must maintain 15 days gap between the date of notice in Form V and date of special session excluding those two dates. A reading of the Rule makes it clear that while not maintaining 15 days gap after the date of notice in Form-V and date of scheduled meeting

invalidates the notice, but merely because meeting is not convened within 30 days after receiving notice of no confidence, the notice does not lapse/does not become otiose. At the most the competent authority may be liable for disciplinary action. The notice would lapse only in the event of 'no quorum' on the day when special session is convened (Rule 7) and in no other contingency. Further, there is no bar imposed to convene a meeting second time if no meeting took place on the date fixed in Form-V.

13. In the case on hand, special session was convened within 30 days. However, initially there was stay of holding meeting and finally notice in Form-V was set aside only on the ground that mandatory 15 days gap was not maintained. Further, the Division Bench granted liberty to the competent authority to act on the representation (sick-notice) issued by members to convene special session to consider a motion of no confidence.

14. According to learned counsel for petitioner, as 30 days time expired from the date of notice of motion of no confidence, it is no more permissible to the competent authority to convene the special session of Mandal Praja Parishad. In the instant case, initially learned single Judge of this Court granted stay and subsequently Writ Appeal as well as Writ Petition were disposed of by common order setting aside notice in Form-V and granting liberty to the competent authority to take further course of action.

15. At this stage, it is also necessary to look into the proviso appended to Rule 3. This proviso deals with a contingency where Court grants stay of holding special session. The competent authority should adjourn the special session and should convene

special session soon after the stay is vacated. This proviso enlarges time to convene special session by competent authority by another 30 days from the date of knowledge of vacation of stay.

16. It is thus apparent that the 30 days time mentioned in main provision of Rule 3 is enlarged by the proviso for another 30 days. Impugned notice is issued within 30 days after disposal of Writ Appeal and Writ Petition. Further, the time frame is for the competent authority to convene the meeting. This is intended to ensure that the competent authority would not sit over the request received by him as per Rule 2 and delay in convening the special session and scuttle the will of the majority members to express their loss of confidence in the President.

17. On a cumulative reading of the Rules and object of Section 245 of the Act, 1994, it cannot be said that notice of motion of no confidence lapsed and that it is not permissible to hold special session to discuss the motion. This aspect has not fallen for consideration in **Kamisetty Narayana Murthy** (supra). In the facts of this case, said decision do not come to the aid of petitioner. Thus, I see no merit in the contention of learned counsel for petitioner, by placing reliance on the main provision in Rule 3 of the Rules, to contend that as 30 days time from the date of moving no confidence motion is over, the motion need not be tabled before Mandal Praja Parishad.

18. In the facts of this case, as the motion of no confidence does not lapse, there is no illegality in the decision of the competent authority to issue notice in Form-V to convene the meeting of special session to consider the motion of no confidence moved by

some members of the Mandal Praja Parishad. Writ Petition is dismissed accordingly. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 26.10.2018
tvk/kkm

Note: To mark L R copy- YES



HONOURABLE SRI JUSTICE P.NAVEEN RAO



WRIT PETITION NO.38319 OF 2018

Date: 26.10.2018

Tvk/kkm