

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

+ WRIT PETITION NO. 40769 of 2018

%20-11-2018

Gurram Bhooma Reddy s/o. Chinna Yella Reddy,
Aged 60 years, occu: Agriculture and President of
Mandal Praja Parishad, Choppadandi, Choppadandi
Mandal, Karimnagar district.

... Petitioner

Vs.

\$ The State of Telangana, rep.by its Prl.Secretary,
Panchayat Raj and Rural Development Department,
Secretariat Buildings, Hyderabad and others.

.... Respondents

!Counsel for the petitioner : Sri V Ravi Kiran Rao

Counsel for the Respondent No.1 : Govt Pleader for Panchayat Raj

Counsel for the Respondent No.2 : Govt Pleader for Revenue

Counsel for the Respondent No.3 : Sri G Narendra Reddy

<Gist :

>Head Note:

? Cases referred:



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

WRIT PETITION NO. 40769 of 2018

Between :

Gurram Bhooma Reddy s/o. Chinna Yella Reddy,
Aged 60 years, occu: Agriculture and President of
Mandal Praja Parishad, Choppadandi, Choppadandi
Mandal, Karimnagar district.

.... Petitioner

And

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

.... Respondents

JUDGMENT PRONOUNCED ON : 20.11.2018

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.40769 OF 2018

Date: 20.11.2018

Between:

Gurram Bhooma Reddy s/o. Chinna Yella Reddy,
Aged 60 years, occu: Agriculture and President of
Mandal Praja Parishad, Choppadandi, Choppadandi
Mandal, Karimnagar district.

.....Petitioner

And

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

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.40769 OF 2018

ORAL ORDER:

Heard learned counsel for petitioner and learned Government Pleader for Panchayat Raj and Sri G Narender Reddy learned standing counsel for third respondent.

2. The only issue for consideration in this writ petition is whether the notice in 'Form-V' dated 31.10.2018 convening Special meeting of Mandal Parishad to consider the motion of no confidence moved by members of the Parishad fixing the date of meeting as 16.11.2018 is invalid on the ground that by the time notice was served on the petitioner 15 days gap from the date of service and the scheduled date of special meeting is not maintained.

3. Petitioner is elected as president of Choppadandi Mandal Praja Parishad in the elections held on 6.4.2014. On 24.10.2018 11 members of the Mandal Parishad addressed signed letter to the Revenue Divisional Officer intimating him that they are moving a motion of no confidence against the president. On the same day they have served notice in Form-II(A) expressing their loss of confidence and requesting him to convene special meeting of the Parishad. In response to this notice Revenue Divisional Officer, Karimnagar issued notice in Form V dated 31.10.2018 informing the members and the petitioner convening special meeting of the Parishad to consider the motion of no confidence on

16.11.2018. According to petitioner this letter was served on him on 5.11.2018.

4. In the above factual background it is contended that as there is a shortfall of 15 days between the date of service of notice and date of special meeting, the no confidence motion cannot be taken up. It is mandatory to maintain 15 days gap between the date of service of notice on the member and the date of special meeting. Therefore impugned notice is liable to be set aside on that ground.

5. Learned Counsel for the petitioner placed before this court decisions rendered by Full Bench of this Court in **K.Sujatha v Government of Andhra Pradesh and another**¹, decision of the Full Court of the Karnataka High Court in **C.Puttaswamy v. Prema**², decision of Full Bench of Orissa High Court in **Sarat Padhi v. State of Orissa and others**³ and decision of Supreme Court in **K. Narsimaiah v. H.C.Singri Gowda and others**⁴. In all the above decisions, the issue considered was with reference to the notice period to consider no confidence motion by the local body against its President/Vice President etc.

6. In the case on hand the relevant rule for consideration is 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.

¹ 2004 SCC Online AP 317

² AIR 1992 Kant 356

³ AIR 1988 Orissa 116

⁴ AIR 1966 SC 330

7. Though Learned Counsel for petitioner fairly submits that view taken by the Full Bench of this Court in **K.Sujatha** is against the point canvassed by him herein but would endeavour to persuade the Court to place the matter before Division Bench for consideration to refer to Full Bench. It was contended that decision of Supreme Court in **K.Narsimaiah** is with reference to the provisions in '**Mysore Town Municipalities Act**' and said provisions are different from the one in Rule 3. Similarly the provision considered by Full Bench of Orissa High Court is also different. He would submit that having regard to the contentions urged that view taken by the Full Bench requires consideration as decisions referred by Full Bench are on different aspect. In **Smt. Seelam Uma Vs, RDO, Suryapet**⁵ learned Single Judge referred the matter to Division Bench for consideration as to whether matter requires to be placed before Full Bench for reconsideration of the view taken in **K.Sujatha**. The Division Bench, in turn, prima facie agreed with the contentions urged to reconsider the decision and referred the matter to the Full Bench. However, by the time matters were taken up by the Full Bench the tenure of the concerned local bodies was already over and therefore without expressing any opinion, closed the writ petitions. He would therefore submit that having regard to the view expressed by the Division Bench in **Kota Venkata Ramana Reddy** the decision in **Sujatha** requires re consideration.

8. 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:

⁵ W.P. No. 23402 of 2008 dt 24.8.2012

“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.”

9. In **K.Sujatha** the Full Bench considered the issue extensively and held that it is not necessary that there should be a gap of 15 days from the date of service of notice on the members and to the date of special meeting. It is apt to note the opinion expressed by the Full Bench in the following paragraphs:

“20. A Division Bench of this Court in Reddy Raghava Reddy v Government of A.P. MANU/AP/0207/1999 MANU/AP/0207/1999 : 1999(2)ALD298 , also considered the question relating to sending of copy of

Motion in Form No. III as provided in Rule 3 of the rules and that whether serving of notice is directory or mandatory and observed that 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 opined that the object of procedural law is to apprise the member that vote of No-confidence would be held on a particular date and at a particular time for consideration of Motion of No-confidence. It is only the intention of the proposer, which has to be notified to the members. It was also observed that in an election, the right of the elected person is neither a fundamental right nor an equitable right. It is a statutory right and can be exercised or taken away strictly in terms of the statute and since the object of the statute is only to notify to the members of the time and place of the meeting for consideration of the proposal unless prejudice is shown to have been caused, Motion will not become invalid. In that case proceedings of the meeting had already taken place. Out of twelve members eight members voted in favour of Motion of No-confidence. Court thus held that notice being only directory mere use of the word "shall" cannot give rise to it being a mandatory in the facts and circumstances of the case especially when no consequence of non-compliance has been provided by the Legislature.

21. We need not examine the other cases cited at the bar, which do not at all support the submissions made on either side for or against the propositions addressed.

22. Having analysed the rules we find that the scheme of issuing notice of meeting to every member provided when notice of Motion of No-confidence is submitted, can be divided into separate parts. After the notice of intention to move Motion has been submitted in the requisite form to the concerned authority under Rule 2, the said Officer thereafter under Rule 3 is required to convene and preside over a meeting for consideration of the Motion. He is required to convene and preside over the meeting, which shall not be later than thirty days from the date on which the Motion of notice was delivered to him. We are not concerned with this part of Rule 3 of the Rules. We are concerned only with the later part of Rule 3, which enjoins upon him to give to every member notice of not less than fifteen clear days and about the consequences of non-compliance of this provision. First requirement of this part of Rule 3 is of giving notice to every member. The second requirement is the period of notice of not less than fifteen clear days excluding the date of notice and the date of proposed meeting. The third portion of the rule is about the different modes of delivery or effecting of service of notice. Insofar as the first portion is concerned, there is no dispute and it must be held that the Officer concerned must give and is bound to give notice of Motion to every member in requisite form annexed to the Rules, which requirement is mandatory. There is also no dispute as regards the second portion that there should be fifteen clear days available between the two relevant dates i.e., the date of notice and the date of proposed meeting. This portion of Rule 3 is also mandatory inasmuch as the concerned officer cannot act in a manner of even issuing notice of a period of less than

fifteen clear days. Both the portions being mandatory in nature, breach of these two conditions would make the meeting as well as the proceedings taken therein invalid.

23. The crucial question to be answered is about the delivery of the notice. The concerned Officer as per Rule 3 is required to give notice in the prescribed form and "shall be delivered to the member," as specified in the said rule 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 clauses (a) and (b) refuse to receive the notice, by affixing the same at some conspicuous part of his place of residence or business.

24. The first mode of delivery is personal delivery to the member by tendering notice to him. The second mode being that in case such member is not found by the person who has been deputed to deliver the notice, the said person is required to leave that notice at his last known place of residence or business or even by giving or tendering it to some adult member or servant of the family. The third mode of delivery of notice is by sending it by registered post with acknowledgement due. Such mode can be resorted to only when the member does not reside in the Gram Panchayat area or Mandal Parishad or within the District and if his address is known to District Panchayat Officer or Chief Executive Authority/Collector or Sarpanch of the Gram Panchayat. In case service by the first two modes is not permissible and third mode of service by post can also not be resorted to, there is the mode of serving the notice by affixing it at some conspicuous part of his place of residence. This mode of affixation can be resorted to only if the member or any adult member or servant of the family of the member though available at the time of tendering notice but refuses to receive the notice. The notice can be affixed as indicated above. This mode need not be adopted in case member is not residing in the concerned area.

25. In Narasimhaiah's case (supra), the Supreme Court clearly held that giving of anything is not complete unless it reaches the hand of the person to whom it is given and in the eye of law giving is complete in many matters once it has been offered. Delivery of notice in the present case would be by various modes as provided in Rule 3. But there is neither any authority nor any principle for the proposition that insofar as the modes provided in clauses (a), (b) and (d) are concerned that as soon as the person with a legal duty to give the notice despatches the notice to the address of the person to whom it has to be given, the giving is complete. Notice is required to be given in the mode and manner provided in the rule. The date of

despatch when either of the modes provided in clauses (a), (b) and (d) is resorted to would not be relevant. The date of despatch would be relevant only in case of mode as provided in Clause (c) of Rule 3 is resorted to. Clause (c) authorises the Officer concerned to "send" the notice through registered post, if such member does not reside in the Gram Panchayat area or Mandal Parishad area or within the District and his address is known. As regards the mode of sending the notice by post the date of despatch is relevant. We are concerned with the question of shortfall in the days available to the member from the date notice is received by him.

26. Whether the rule is mandatory or not the use of the word "shall" in the rule cannot be considered to be conclusive. The Supreme Court in Narasimhaiah's case (supra) held that to ascertain the intention of the Legislature or the rule making authority, the Court has to examine carefully the object of the statute, the consequence that may follow from insisting on a strict observance of the particular provision and above all the general scheme of the other provisions of which it forms a part.

27. The ordinary meaning of the word 'notice' is knowledge, information or announcement. Therefore, the purpose and object of issuing the notice is to give due intimation of the proposed meeting of No-confidence motion to all the members of the Panchayat or Mandal Parishad or Zilla Parishad and to make it possible for the members to adjust their work in such a manner so as to enable them to attend the proposed meeting of No-confidence Motion. Once the member receives intimation, he is not required to make any further preparation for the purpose of meeting except by making himself available in the meeting. Rule 8 says that the proposed Motion will be put to vote without any debate and voting would be by show of hands. In case no preparation is required to be made by the member for the meeting except by presenting himself in the meeting, whether the member gets shorter period of time than fifteen days or not is irrelevant and meaningless. Had some discussion to take place or debate to follow, the matter would have been slightly different. Even the submission that holding the rule to be mandatory might lead to a situation of certain members interested scuttling the purpose is of no relevance inasmuch as in case a section of members is interested to scuttle the Motion, the purpose can be served differently. Mere causing delay in accepting the notice within the requisite period of fifteen days is not the only mode of scuttling the meeting. Such section of the members can, conveniently avoid attending the meeting so as to ensure that quorum is not complete when meeting is called to order, because as per Rule 7 of the rules if within two hours there is no quorum, the notice shall stand lapsed.

28. The purpose and object of giving notice of consideration of No-confidence Motion is only to give due intimation to the members or information of the proposed meeting. Therefore, the fact that a member has got a shorter period of notice than fifteen clear days from the date of receipt of the notice would not matter. When notice is sent by post and the law

permits the date of sending of notice to be treated as the date of delivery in that case obviously the period available to the member will be shorter than fifteen clear days from delivery to meeting, therefore, there is no reason why the Rule 3 be held to be mandatory as regards the service of notice. Unless it is shown that the shortfall in the period of notice of the meeting has caused some prejudice to the member, neither the meeting nor the proceedings taken thereunder would be said to be invalid. It is only in the eventuality of prejudice being shown that the meeting or the proceedings taken thereunder can said to be invalid. The Legislature has rightly not provided in the rule that non-compliance of any shortfall in the notice would render the meeting or the proceedings taken thereunder to be invalid. Had that been the intention, the Legislature, obviously, would have provided since the law had been clearly settled by the time the Act was enacted and the Rules were framed by the judgment in Narasimhaiah's case (supra). In that view of the matter, we are of the opinion that the ratio of the judgment of the Division Bench of this Court laid down in Anandareddy's case (supra) that non-service of notice of fifteen clear days would make the meeting and the proceedings taken thereunder null and void cannot be said to be the correct law."

10. I am in respectful agreement with the lucid exposition of law by the Full Bench.

11. Even to test the contention of learned counsel Sri Ravi Kiran Rao, having regard to earlier reference to Full Bench, on going through the provision in rule 3, it is manifest that, the rule does not envisage maintaining such gap after service of notice on each member. The intention of the rule making authority is clearly discernible from the reading of the provision. The course as suggested by learned counsel for petitioner would create uncertainty to the date of holding special meeting as it cannot be ensured that notices can be served on all members on the same day. The competent authority, cannot in advance, fix a date of special meeting if he is required to maintain such a gap from date of service of notice on all members. The rule does not intend to create such uncertainty. More particularly having regard to the

outer limit prescribed to convene the meeting after motion of no confidence is served.

12. Further, in the case on hand by the time notice was served on petitioner he was having 11 days time. Having regard to law laid down by the Full Bench, it cannot be said that time of 11 days is not sufficient to participate in the special meeting. I see no merit in the contention that notice of holding special meeting is vitiated on the ground that after it was served on the petitioner the gap is reduced to 11 days only. The Writ Petition is dismissed. The interim order dated 14.11.2018 stands dissolved.

JUSTICE P.NAVEEN RAO

Date: 20.11.2018
Tvk



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