

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR. JUSTICE S. SUNIL DUTT YADAV

WRIT PETITION No.50210/2018 (LB-ELE) DATED:15-12-2018

Smt. Poornima Sudhin W/ o Sudhin Kumar Vs. The State of Karnataka, Rep. by its Secretary, Department of Rural Development & Panchayatraj, M.S. Building, Bengaluru-560 001 and Others

ORDER

The petitioner, who is the President of Aldur Gram Panchayath, Chikmagalur Taluk elected on 30.06.2015 has filed the present writ petition seeking for the issuance of writ of certiorari to quash the notice convening a meeting for consideration of motion of no confidence by the Assistant Commissioner, Chikmagalur at Annexure- G dated 02.11.2018.

2. The petitioner states that a previous effort to move a motion of no-confidence under Section 49 (2) of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993 (' the Act ' for brevity) having not been fruitful for want of allegations, a second complaint was made on 26.10.2018 with substantive allegations.

3. The petitioner states that notice came to be issued by the Assistant Commissioner as per Annexure G on 02.11.2018 fixing the date of the meeting as 17.11.2018 at 11.00 a.m. The notice at Annexure- G specifies that it is a notice of the motion of no confidence in terms of Section 49 (1) of the Act read with Rule 3 (2) of the Karnataka Panchayath Raj (Motion of No-Confidence against the Adyaksha and Upadyaksha of Gram Panchayath Rules) 1994 (' the Rules ' for brevity).

4. The petitioner having challenged the said notice issued by the respondent No.2, this Court while entertaining the petition had granted an interim order on 16.11.2018 which has been extended from time to time.

5. The primary contention of the petitioner is that the motion of no-confidence moved with allegations is a motion of no-confidence in terms of 49 (2) of the Act and such motion of no-confidence is impermissible in light of the law laid down in W.A.No.844/2018 and connected matters.

6. The Division Bench of this Court in the aforementioned case has observed at para-47 of its judgment that the procedure and method for consideration of the motion of no-confidence moved in terms of Section 49 (2) of the Act is required to be separately provided for under the Rules and until the same is done that such motion of no-confidence cannot be proceeded with under the Rules of 1994.

7. In reply, Smt. Prathima Honnapura, the learned Additional Government Advocate appearing for the respondent Nos. 1 and 2 would contend that though the notice expressing intention to move a motion of no confidence contains allegations, the Assistant Commissioner while issuing notice to the members as

contemplated under Rule 3 (2) of the Rules has termed the said motion of no-confidence as one under Section 49 (1) of the Act and hence, the contention of the petitioner is not tenable.

8. It is further submitted by learned Additional Government Advocate that once the notice submitted by the Assistant Commissioner refers to the motion of no confidence being put before the Gram Panchayath for consideration which would be considered in terms of Rule 7 of the Rules, no prejudice as such is caused to the members.

9. It is also contended that since there would be no debate in the said meeting and the motion would directly be put to vote, there is no illegality as such that has been committed.

10. The learned Additional Government Advocate further submit that once a notice expressing intention to move a motion of no-confidence is submitted, the Assistant Commissioner has no discretion to prevent the motion of no-confidence to reach a logical conclusion and draws attention to para-46 of the judgment of the Division Bench wherein, there is a reference that once motion of no-confidence has been fulfilled, the procedural requirement under Section 49 (1) of the Act must be taken up for consideration.

11. The learned Additional Government Advocate also refers to the observations at para-48 wherein, it is observed that motions of no-confidence moved under the now inoperable Section 49 (2) of the Act in the decided writ petition would be deemed to those moved under Sub-section (1) of 49 of the Act and could not be considered invalid.

12. Sri Channabasppa S. Nandihal, the learned counsel appearing for the respondent Nos.4 to 26, who are other members of the Gram Panchayath would submit that they are ready to give up the allegations in their notice for moving a no-confidence motion which would obviate the necessity of recording a finding as regards the contentions of the petitioner and that if the allegations are absent, the resolution could be treated under Section 49 (1) of the Act and that in the facts of the present case, there having been no procedural violations and the motion being in compliance with all the procedural requirements as contemplated under Rule 3 (2) of the Rules, the motion of no-confidence could be considered to be one under Section 49 (1) of the Act.

13. It is also contended that the motion of no confidence with allegations has been clearly held to be unworkable till Rules are framed to provide for the procedure is clear from the observations made by the Division Bench in the case of Smt.Lakshamma v. State of Karnataka and Others (W.A. No.844/2018 & connected matters) at para-47 and hence, no motion of no-confidence could be moved.

14. Heard the learned counsel of both sides extensively.

15. In the present facts, the members moving the motion have not mentioned under which provision they are issuing notice of motion of no-confidence. Accordingly, in such cases, it would fall to the Assistant Commissioner to make a very cursory enquiry into the contents of the notice of motion and determine as to

whether the said motion of no-confidence is one under Section 49 (1) [without allegations] or 49 (2) [with allegations] of the Act and proceed.

16. It is clear that if the legislature had intended that there were two categories of motion of no confidence, the Assistant Commissioner would only have to decide on the basis of a bare perusal of the complaint as to which category the motion of no confidence would belong to. If it were to be one under Section 49 (1) of the Act, the Assistant Commissioner has to proceed with the same as per the Rules framed, and on the other hand, if it were to be a motion of no confidence that falls within Section 49 (2) of the Act, he will have no discretion to proceed with such resolution till Rules are framed providing for procedure to be adopted as regards such matters of motion of no confidence as observed by the Division Bench in Lakshamma's case (supra).

17. Once the Division Bench has pronounced the authoritative interpretation till Rules are framed providing for procedure to consider motion of no confidence under Section 49 (2) of the Act, it is clear that no such motions of no-confidence can be moved.

18. The judgment of the Division Bench in W.A.No.844/2018, has observed as follows:

" 47. where the learned Single Judge has observed that the motion of no confidence under sub-section (2) of Section 49 would remain subject to mode and method for its consideration as per sub-section (1).

Such mode and method would only relate to the requirement of the number of members for moving the motion and for adopting the resolution on that basis. However, the procedure and method for consideration of the motion under sub-section (2) of Section 49 shall have to be provided by separately promulgated Rules and any such motion under sub-section (2) of Section 49 of the Act of 1993 cannot be proceeded under the Rules of 1994, even as amended by the notification dated 21.08.2018. "

19. Hence, it is clear that a motion of no confidence if sought to be moved with allegations cannot be resorted to till Rules are framed providing for the procedure to be followed as regards motion of no confidence under Section 49 (2) of the Act.

20. The learned Additional Government Advocate points out that the notification dated 17.04.2018 as well as the notification dated 12.06.2018 which provided for consideration of motion of no-confidence in particular with respect to motions of no-confidence with allegations and all other communications stand withdrawn and further action would be taken in accordance with the orders passed by the Courts. Hence, on a perusal of communications dated 17.10.2018, there are no other executive instructions in force as regards the motions of no-confidence with allegations.

21. The observation as regards the consequence on the motions of no-confidence as referred to in para 48 of the Division Bench judgment must be construed to be applicable as regards motion of no-confidence moved under Section 49 (2) of the Act which were pending consideration as on the date of passing of the order in the

Division Bench and cannot be construed to be applicable as regards motion of no-confidence that were to be moved with allegations, i.e., those falling under Section 49 (2) of the Act, even after the judgment of the Division Bench. Hence, it is clear that it is not possible to treat a petition filed under Section 49 (2) after the disposal of W.A.No.844/2018 as one under Section 49 (1) of the Act.

22. Given that, prima facie there have been specific allegations made by the members, the motion must be deemed to be one moved under Section 49 (2) of the Act in the absence of the members specifying as to whether it is a motion moved under Section 49 (1) or 49 (2) of the Act. Given the observation of the Division Bench in para-43, a debate becomes necessary as to these allegations, a task which is not possible given the absence of Rules.

23. The respondent members have offered to give up the allegations, however, the only option open to the members to do SO is through a fresh notice. Accordingly, the Writ Petition is allowed by setting aside the order at Annexure- G, with liberty to the members to move a fresh notice under Section 49 (1) of the Act.