

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF SEPTEMBER, 2019

BEFORE

THE HON'BLE MR.JUSTICE G.NARENDAR

W.P.NO.4355/2019 (LB-ELE)

c/w

W.P.No.14214/2018 (LB-RES) AND

W.P.No.52359/2018 (LB-ELE)

Sri. T. Nagaraju

v/s.

Assistant Commissioner, Tumkur Sub Division,
Tumkur

ORDER

1. Heard the learned Counsel Sri P.P.Hegde appearing for the petitioner in W.P.No.4355/2019, learned Counsel Sri Hariprasad.M.B. appearing for the petitioners in W.P.No.14214/2018 and W.P.No.52359/2018, learned HCGP, learned Counsel Sri M.R.Rajagopal for respondents 4 to 10 in W.P.No.4355/2019, learned Counsel Sri S.C.Vijayakumar for respondents 4 to 19 in W.P.No.14214/2018, learned Counsel Sri B.J.Somayaji for respondent No.3 in W.P.No.14214/2018 and for respondent No.5 in W.P.No.52359/2018 and the learned Counsel Sri Vijayakumar.S.C. for respondents 9 & 6 to 23 in W.P.No.52359/2018.

2. It is the case of the petitioner in the lead writ petition that he was elected as the member of Markonahalli Grama Panchayat in the year May 2015. Later, petitioner successfully contested to the post of Adhyaksha. That the petitioner has been discharging his duties in the said post without there being any allegations and while doing so, he was served with the notice dated 14.01.2019 issued by respondent No.1 – Assistant Commissioner intimating that a meeting had been convened on 30.01.2019 at 11.00 a.m. to consider the no-confidence motion proposed by the members of Markonahalli Grama Panchayat. A copy of which is produced as Annexure-A and impugned in the writ petition.

3. It is the case of the petitioner that the notice was served on him on 16.01.2019 through registered post. That on opening the postal cover, he found the copy of the proposed motion and the petitioner was kept in dark with regard to the grounds on which the members sought to dislodge him. That respondent No.1 erred in calling for the meeting without there being any ground whatsoever.

4. It is contended by the learned Counsel for the petitioner in the lead writ petition, that the meeting notice is violative of the provisions of Rule 3 of the Karnataka

Panchayat Raj (Motion of No-confidence against Adhyaksha and Upadhyaksha of Grama Panchayat) Rules, 1994 (for short, 'Rules of 1994'), in as much as, that 15 days clear notice is not given and that in the absence of 15 days clear notice, the meeting convened pursuant to the said notice stands vitiated being contrary to the provisions of Rule 3 of the Rules of 1994. Learned Counsel for the petitioner though has challenged the vires of the 1994 Rules on various grounds, he would submit that he does not press the said prayer and would submit that the writ petition is canvassed on the sole ground of the meeting notice being vitiated on account of failure to give 15 days clear notice. In view of the said submission, the prayer at (aa) and (b) do not survive for consideration and are accordingly rejected.

5. Learned Counsel for the petitioner has placed reliance on Sri Ramanath Iyer's Major Law Lexicon, IV Edition 2010 and invites the attention of the Court to the definition of the phrase 'clear days' and contends that if the statute were to use the phrase 'clear days', then the date of receipt and the terminal day should be excluded for the purpose of calculating the clear days, in that, the intervening period between the date of receipt and the date of the proposed action, there ought to be 15 clear days. He

would contend that in the instant case, the meeting notice was received on 16.01.2019 and the meeting was scheduled to be held on 30.01.2019 and that if the two terminal days are excluded i.e., the date of receipt and the meeting date, there are only 13 clear days and hence, there is violation of Rule 3(2) of the Rules of 1994, and hence, the meeting notice stands vitiated and accordingly, the writ petition requires to be allowed and the proposed meeting notice and consequential action are required to be quashed. To buttress the said argument, he would place reliance on the language of Rule 3(2) and would invite the attention of the Court to the use of the phrase 'shall give' and would contend that the word "give or giving" has been interpreted by the Apex Court to mean as something which is not complete until it has reached the hands of the intended person or recipient. In that regard, he would place reliance on the ruling of the Apex Court in the case of K.NARASIMHIAH VS H.C.SINGRI GOWDA & OTHERS - AIR 1966 SC 330. He would take this Court through paragraphs 10 & 11 of the said ruling and contend that giving of notice as mandated under Rule 3(2) is complete only when the notice is received by the intended person and if that be the definition of the word 'give' and if the phrase 'shall give' and '15 days clear notice' are read in conjunction, then the

only inescapable conclusion that one would arrive at is, that the notice period as mandated under Rule 3(2) would commence from the day after the receipt of the notice. In this regard, he would also place reliance on the ruling of the Apex Court in the case of MUNNALAL AGARWAL VS JAGDISH NARAIN & OTHERS - (2000)1 SCC 31. In support of the proposition that both the terminal days ought to be excluded. Learned Counsel for the petitioner would place reliance on the ruling of the Apex Court in the case of JAI CHARAN LAL ANAL VS STATE OF U.P. & OTHERS - AIR 1968 SC 5. He would further place reliance on the ruling of this Court in the case of SANGAPPA VS THE ASSISTANT COMMISSIONER, BIJAPUR DISTRICT & ANOTHER - ILR 2004 KAR 1102, and would take this Court through paragraph 9 of the said judgment which reads as under:

"9. In the instant case, the notice was served on the Petitioner on 14.1.2004 and the special meeting is scheduled to be held on 29.1.2004. Therefore, it is crystal clear that there is no 15 days clear notice to the petitioner, and thus the mandatory Rules of Sub-Rule 2 of Rule 3 is not complied with. Hence, the impugned notice is liable to be quashed without dwelling upon the other contentions of the learned Counsel for the Petitioner."

6. He would further place reliance on the Full Bench decision of this Court in the case of C.PUTTASWAMY VS SMT. PREMA - AIR 1992 KAR 356, to augment the proposition that the provisions of Rule 3(2) are mandatory. He would rely on the ruling of the Division Bench rendered in the case of MUNIYAPPA & OTHERS VS STATE OF KARNATAKA - ILR 1998 KANT 3989, to contend that the position in law has not changed even after the amendment to the Act 1993 and he would submit that the Full Bench and Division Bench have categorically held Rule 3(2) is mandatory.

7. Learned Counsel for the petitioner contends that in the light of the above rulings, 15 days clear notice period is mandatory and it cannot be gainfully argued that the petitioner by receiving the meeting notice has waived or has acquiesced the meeting and that the instant writ petition is preferred even before the holding of the meeting to consider the motion of no-confidence.

8. Per contra, learned Counsel Sri M.R.Rajagopal appearing for respondents 1 to 4 in the lead writ petition submits that the petitioner is using the legal process as a tool to preempt the holding of the meeting to consider the motion of no-confidence and that the same is a mere dilatory tactics to avoid the meeting. He would submit that

majority of the members have voted in favour of the motion and only two have voted against the motion and the motion has been carried. He would invite the attention of the Court to Section 49(1) of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993 (for short, 'the Act') which mandates that every Adhyaksha or Upadhyaksha who has lost the confidence, shall on the passing of the motion be deemed to have vacated the office and he would submit that the motion having been passed in terms of the statute, the petitioner is deemed to have vacated the post and the instant writ petition is of mere academic value. He would further contend that in view of the law laid down by the Apex Court in the case of PADMINI SINGHA VS STATE OF ASSAM & OTHERS - (2018) 10 SCC 561, petitioner is required to demonstrate the prejudice caused to him on account of the alleged irregularity in the service of notice. That the rules framed are merely hand maidens of the substantive law i.e., the provision of Section 49(1) and the Rules are framed only in aid of the object sought to be achieved by the statute and any other interpretation would defeat the very object sought to be achieved by the statute. He would contend that even if the proposition as canvassed by the petitioner is admitted for the sake of argument, petitioner

having failed to demonstrate any prejudice, the case of the petitioner requires to be rejected. He would contend that the meeting has been held in complete compliance of the Rules and that a lame duck excuse, of defective service, ought not to be entertained and if the same is entertained, it would lead to defeating the very purpose for which the provisions of Section 49 has been enacted. He would also place reliance on the ruling of the Division Bench in the case of MUNIRATHNAMMA VS THE ASST. COMMISSIONER, KOLAR SUB-DIVISION & ANOTHER – ILR 2007 KAR 690, to contend that one day shortfall in the notice period cannot be a ground to mutilate the will of the majority. He would place reliance on the said ruling to contend that hypertechnical approach had to be avoided in matters pertaining to motions of no-confidence.

9. Per contra, learned HCGP would contend that the proposed motion was moved by seven members of the Grama Panchayat and that they constituted more than the required majority as stipulated under the Rules and pursuant to the proposed motion being in order, the respondent No.2 has issued the meeting notice. That the motion of intention was moved on 03.01.2019 and accordingly after a passage of 10 days, the meeting notice

has been issued and keeping in view the mandate of the law, the meeting was scheduled to be convened on 30.01.2019. That the notice was dispatched on 14.01.2019 through registered post and that there is compliance of Rule 3(2). That in view of the interim order granted by this Court, the results have not been announced. In the course of arguments, learned HCGP also confirms the holding of the meeting and the passing of the motion, but would submit that the results have not been announced by respondent No.2 in view of the restraint order by this Court.

10. In the connected writ petition, the petitioner is yet again an elected member of Thagachagere Grama Panchayat. That he was elected to the post of Adhyaksha in the election held on 30.06.2014. That on 28.03.2018, he received a postal cover addressed to him. That on opening the cover, he realized that meeting notice had been forwarded to him. On perusal of the meeting notice dated 21.03.2018, he came to understand that a motion of no-confidence had been proposed against him and that respondent No.2 had convened the meeting on 05.04.2018 to consider the motion of no-confidence. This Court did not deem it a fit case to grant any interim relief staying the conduct of the meeting, but on the other hand, has held

that the proceedings held pursuant to the meeting notice dated 21.03.2018 would be subject to the final orders in the writ petition. Admittedly, the meeting has been convened and the event has passed. The instant writ petition is also canvassed on the sole ground that 15 days clear notice has not been given to the petitioner and thereby vitiated the meeting notice, and hence, the meeting held on 05.04.2018 stands vitiated. Learned Counsel for the petitioner would submit that he adopts the arguments advanced by the learned Counsel Sri P.P.Hegde in the lead writ petition.

11. The second writ petition is preferred by the same petitioner, calling in question the proceedings dated 14.11.2018 whereby election has been notified for the post of Adhyaksha. This Court by an interim order has restrained the authorities from announcing the results of the election to be held on 24.11.2018.

12. Having heard the learned Counsels and having adverted to the various contentions, the point that falls for consideration is,

“whether the meeting notices impugned in the writ petitions are contrary to the mandate of Rule 3(2) and hence, stands vitiated?”

13. The said issue need not detain this Court for long in view of the law laid down by the Apex Court in the case of K.NARASIMHIAH VS H.C.SINGRI GOWDA & OTHERS - AIR 1966 SC 330, wherein the Apex Court was considering the contention that three clear days notice, of the special general meeting was not given and hence, the meeting stood invalidated and the Apex Court in paragraphs 10 & 11 has observed as under, and thereby the Apex Court has settled the law that giving of anything would not be complete unless it has reached the hands of the intended recipient.

"10. This brings us to the main contention that three days' notice of the special general meeting was not given and so the meeting is invalid. We find it difficult to agree with the High Court that "sending" the notice amounts to "giving" the notice.

11. "Giving" of anything as ordinarily understood in the English language is not complete unless it has reached the hands of the person to whom it has to be given. In the eye of law however "giving" is complete in many matters where it has been offered to a person but not accepted by him. Tendering of a notice is in law therefore giving of a notice even though the person to whom it is tendered refuses to accept it. We can find however no authority or principle for the proposition 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. We are therefore of opinion that the High Court was wrong in thinking that the notices were given to all the Councillors on the 10th October. In our opinion, the notice given to five of the Councillors was of less than three clear days."

14. There can be no quarrel with the law laid down by the Apex Court. Interpreting Section 27(3) of the Mysore Town Municipalities Act, the Apex Court held that the main object of giving notice to the councilors is to make it possible for the councilors to arrange their other business, so as to be able to attend the meeting. The case canvassed by the appellants therein was that some of the councilors of the municipality had received less than three clear days notice as stipulated under the Act and it was contended that the said irregularity vitiated the resolution passed. The Apex Court though accepted the contention that notice given to five of the councilors was less than three days, did not accept the contention that the irregularity in service of notice vitiated the convening of the meeting or the resolution passed. To hold so, the Apex Court placed reliance on the provisions of Section 36 of the Act which reads as under:

“No resolution of a municipal council or any committee appointed under this Act shall be deemed invalid on account of any irregularity in the service of notice upon any councillor or member provided the proceedings of the municipal council or committee were not prejudicially affected by such irregularity.”

15. In the considered opinion of this Court, the said decision is squarely applicable to the facts of the case on hand. The motion of no-confidence is moved under Section 49 of the Act which enables the passing of a resolution expressing no-confidence, and thereby unseat the occupant in the office of Adhyaksha. Section 49 is found in Chapter-III of the 1993 Act. In the same chapter, Section 57 also occurs. Section 57 validates the resolutions of the Grama Panchayat or of any committee, despite certain irregularities in the service of notice. Sub-section (2) of Section 57 reads as under:

“(2) No resolution of a Grama Panchayat or of any Committees of a Grama Panchayat constituted under this Act shall be deemed invalid on account of any irregularity in the service of notice upon any member, provided that the proceedings of the Grama Panchayat or committee were not prejudicially affected by such irregularity.”

16. Sub-section (3) of Section 57 is a deeming provision and by the operation of the said provision, it is deemed that all such resolutions of the panchayats or the meetings of the committee duly convened are valid.

17. The sole ground on which the writ petitions are canvassed are, the meeting convened by the empowered authority i.e., the Assistant Commissioner stands vitiated on account of failure on the part of the authority to give 15 days clear notice. The fact remains that none of the petitioners have canvassed the case of any prejudice caused to them. It has not been explained by the petitioners as to how they have been prejudiced by the said irregularity in service of notice. On a conjunctive reading of sub-sections (2) & (3) of Section 57, it is apparent that unless and until the members of the Panchayat are able to demonstrate that they have been prejudicially affected by any irregularity in the service of notice, the meeting convened and resolution passed are deemed to have been duly convened and passed. The Apex Court in K.Narasimhiah's case stated supra, after noticing the provisions of Section 36 which are virtually in pari-materia with Section 57(2) of the Act was pleased to hold as under and consequently was pleased to dismiss the appeal.

“16. It is important to notice in this connection one of the provisions in Section 36 of the Act. It is in these words:

“No resolution of a municipal council or any committee appointed under this Act shall be deemed invalid on account of any irregularity in the service of notice upon any councillor or member provided the proceedings of the municipal council or committee were not prejudicially affected by such irregularity.”

17. It is reasonable to think that the service of notice mentioned in this provision refers to the giving of notice to the Councillors. Quite clearly, any irregularity in the manner of giving the notice would be covered by the words “irregularity in the service of the notice upon any Councillor”. It appears to us however reasonable to think that in making such a provision in Section 36 the legislature was not thinking only of irregularity of the mode of service but also of the omission to give notice of the full period as required.

18. It is interesting to notice in this connection that the English law as regards meetings of borough councils and county councils contain a specific provision that want of service of a summons to attend the meeting (which is required to be served on every member of the council) will not affect the validity of the meeting. It may be presumed that the legislature which enacted the Mysore Town Municipalities Act, 1951, was aware of these provisions in English law. It has not gone to the length of saying that the failure to serve the notice

will not make the meeting invalid. It has instead said that any irregularity in the service of notice would, not make a resolution of the Council invalid provided that the proceedings were not prejudicially affected by such irregularity. The logic of making such a provision in respect of irregularity in the service of notice becomes strong if the fact that the notice given was short of the required period is considered an irregularity.

19. The existence of this provision in Section 36 is a further reason for thinking that the provision as regards any motion or proposition of which notice must be given in Section 27(3) is only directory and not mandatory.

20. We are therefore of opinion that the fact that some of the Councillors received less than three clear days' notice of the meeting did not by itself make the proceedings of the meeting or the resolution passed there invalid. These would be invalid only if the proceedings were prejudicially affected by such irregularity. As already stated, nineteen of the twenty Councillors attended the meeting. Of these 19, 15 voted in favour of the resolution of no-confidence against the appellant. There is thus absolutely no reason for thinking that the proceedings of the meeting were prejudicially affected by the "irregularity in the service of notice".

21. We have therefore come to the conclusion that the failure to give three clear days' notice to some of the Councillors did not affect the validity of the meeting or the resolution of no confidence passed there against the appellant."

18. On perusal of paragraph 17, it is apparent that the Apex Court has held that the failure to give clear notice of certain days is a irregularity that would be covered by the irregularity in the service of notice. The Apex Court has held that the omission to give notice of full period is a irregularity. Proceeding further, the Apex Court has been pleased to hold that the provisions of Section 27(3) which mandate the mode of service and the period of notice is to be construed as directory and not mandatory in the light of the provisions of Section 36 and proceeded to hold that the irregularity did not invalidate the resolutions passed in the meeting convened pursuant to certain irregularities.

19. In the instant writ petitions also, the sole ground which is canvassed is that the meeting convened under the impugned notices is vitiated on account of omission to give notice of the full period as stipulated under Rule 3(2). In the light of the provisions of Section 57(2), the said irregularity cannot be construed as a material irregularity which vitiates the meeting notice or the resolutions that have been passed pursuant to the meeting notice. The rulings relied upon by the learned Counsel for the petitioner have been rendered without reference to the provisions of Section 57(2) and hence, the same are of no

avail to the petitioners.

20. In the light of the above discussion, writ petitions stand dismissed. The respondents are at liberty to forthwith announce the results.

There shall be no order as to costs.