

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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

WRIT PETITION No.40512/2019 (LB-RES) DATED:19-12-2019

Sri B.R. Siddaramu, Son of Sri R. Ramaiah Vs. State of Karnataka, Department of Panchayath Raj and Rural Development, Vidhana Soudha, Bengaluru-560 001, Represented by its Secretary and Others

ORDER

The petitioner, who is the Upadhyaksha of Gollahalli Grama Panchayat, aggrieved by the notice of the Assistant Commissioner Commissioner at at Annexure- B dated 26.08.2019 whereby 13.09.2019 had been fixed as the date to consider the motion of no-confidence, has filed the present writ petition. The petitioner has sought for a declaration that Rule 3 (1), 3 (2) and 3 (4) of the Karnataka Panchayat Raj (Motion of No-Confidence Against Adhyaksha and Upadhyaksha of Grama Panchayat) Rules, 1994 (' the Rules ' for brevity) is ultra vires the parent Act.

2. The relevant facts being that the complaint at Annexure- A was lodged on 19.08.2019 with the second respondent Assistant Commissioner by the members of third respondent Grama Panchayat seeking to move a motion of no-confidence in terms of Section 49 (1) of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993 (' the Act ' for brevity).

3. It is contended that the Assistant Commissioner is not the Authority to convene or preside over the meeting for moving a motion of no-confidence under Section 49 of the Act. Consequently, the Rules conferring power on the Assistant Commissioner in that regard are ultra vires the Act.

4. The petitioner has contended that the Act provides for a specific procedure for the purpose of convening a meeting that is under Section 62, the Adhyaksha being the executive head is conferred with the power to convene a meeting, while under Section 52 the meeting for transaction of business is to be convened by the Adhyaksha. Hence, it is contended that the Rules framed under the Act which provide for convening of a meeting to consider the motion of no confidence by the Assistant Commissioner not being envisaged in the parent Act and renders the Rules framed in that regard ultra vires the Act and are liable to be struck down.

5. It is further contended that the Rules provide for the Assistant Commissioner to preside over such meeting [Rule 3 (4)], that the Assistant Commissioner shall read to the members of the Grama Panchayat the motion for consideration and put the same to vote- [3 (7)], all of which are stated to be ultra vires the parent Act.

6. It is further contended that the Rules framed are beyond the scope of power conferred under Section 311 of the Act which confers power to frame the Rules.

7. Learned counsel for the petitioner relies on the judgment of the Apex Court in the case of M/s. Bharat Barrel and Drum Mfg. Co. Ltd. and Another v. Employees State Insurance Corporation reported in (1971) 2

SCC860. It is contended that the Apex Court has clearly held that a Rule which prescribes the period of limitation within which an application is required to be filed would have the effect of extinguishing the right conferred under the statute and hence, such a Rule would be outside the power of the Rule making Authority.

8. The petitioner has also relied on the judgment in the case of *Indian Express Newspapers (Bombay) Private Ltd. and Others v. Union of India and Others* reported in (1985) 1 SCC 641, to contend that the subordinate legislation can also be struck down on the same grounds which are available for attacking the legislative provisions.

9. The learned Additional Advocate General appearing on behalf of respondent State submits that Section 49 of the Act read with the Rules are a complete Code in themselves, as considered in the case of *M.Muniyappa and Another v. State of Karnataka and Others* reported in ILR 1997 KAR 677 and hence it is contended that recourse to the procedure under Section 52 or 62 of the Act for convening the meeting of the Grama Panchayat is impermissible.

10. It is further contended that Section 52 of the Act provides for a procedure relating to transaction of business and such meeting is only at the written request of not less than one-third of the total number of members and on a date within 15 days from receipt of such request. It is pointed out that a perusal of Section 49 would indicate that the intention of the legislature with respect to convening of a meeting under Section 49 of the Act follows a different procedure. Drawing attention to Section 49 (1) of the Act, it is submitted that notice of resolution to move a motion of no-confidence is by one-half of the total number of members and with ten days ' notice. Accordingly, it is pointed out that the procedure prescribed under Section 49 and Section 52 are on the face of it different and if it were to be interpreted that a meeting convened under Section 49 (1) of the Act was to follow the procedure under Section 52 of the Act, it would result in an inherent contradiction in the Act, which cannot be conceived of.

11. It is further submitted that the courts ought to be slow in striking down bye-laws, except under the restricted grounds and relies on judgment of the Apex Court in the case of *Om Prakash and Others v. State of U.P. and Others* reported in (2004) 3 SCC 402. Reliance is also placed upon Hon'ble Supreme Court's decision in case of *Maharashtra State Board of Secondary and Higher Secondary Education and Another v. Paritosh Bhupesh Kumarsheth and Others* reported in AIR 1984 SC 1543 to contend that the power of court is limited to an examination as to whether the Regulations framed fall within the scope of Regulation making power conferred on the delegatee by the statute and it is not for the court to examine the merits or demerits of the policy as found in the statute and enquire into the Rules which lay down the procedure for implementing the statute.

12. It is further contended that Rules provide only for subsidiary and ancillary details within the essential guidelines laid down by the legislature and in the present case, the Rules lay down the procedure for consideration of a motion of no-confidence as envisaged under Section 49 (1) of the Act and hence, there is

no excessive delegation of essential legislative power on the delegatee. Reliance has been placed on the judgment of the Apex Court in the case of M/s. Tata Iron and Steel Co. Ltd. v. Workmen of M/s. Tata Iron and Steel Co. Ltd. and Others reported in AIR 1972 SC 1917.

13. After hearing both the sides, the question that falls for consideration is:

' Whether Rule 3 of the Karnataka Panchayat Raj (Motion of No-Confidence Against Adhyaksha and Upadhyaksha of Grama Panchayat) Rules, 1994 which provides for the Assistant Commissioner to convene a meeting to consider the motion of no-confidence moved by the members is ultra vires the parent statute? "

14. From the arguments that have been advanced by the petitioner, it becomes clear that the petitioner contends that the Assistant Commissioner was never envisaged as the Authority which is vested with the power to convene a meeting. However, on a careful perusal of Section 49 (1) of the Act and Rule 3 of the Rules, it becomes clear that while Section 49 (1) of the Act refers to the substantive right of the members to move the motion of no-confidence, the Rules merely are ancillary to the enforcement of such right and provide for a procedure to convene the meeting in order to give effect to the assertion of right of members to move a motion of no-confidence. In fact, the Assistant Commissioner is only an administrative functionary and has not been conferred with any quasi judicial power while convening a meeting of no-confidence. As the parent Act specifies that the motion of no-confidence could be convened in accordance with the procedure as may be prescribed and the Rules that are framed are specifically stated to be framed in exercise of power conferred by Section 49 read with Section 311 of the Act, accordingly, the Rules have been framed pursuant to the conferment of power under the parent statute and hence, cannot be held to be in excess of the power conferred.

15. The reliance by the petitioner on M/s. Bharat Barrel and Drum Mfg. and Co. Ltd. (supra) does not support the petitioner's case. The facts of the said case was that Section 96 (1) of the Employees State Insurance Act, 1948 provided for framing Rules regarding procedure to be followed in proceedings before courts.

The question that arose for consideration was as to whether the Rule that prescribed limitation which was a subordinate legislation amounted to affecting the substantive right conferred under the statute. The court held that the extinction of the remedy under the Rules was impermissible while holding

" 14 It appears to us that where the legislature clearly intends to provide specifically the period of limitation in respect of claims arising thereunder it cannot be considered to have left such matters in respect of claims under some similar provisions to be provided for by the rules to be made by the Government under its delegated powers to prescribe the procedure to be followed in proceedings before such Court "

While holding so the Court held that the power to bar entertaining a matter cannot be read into the power to frame Rules relating to procedure for conduct of proceedings.

The law laid down and the observations made are not applicable to the present case. The Rules impugned are merely procedural and can be construed to provide for procedure to implement the legislative intent and nothing more. The reliance by the learned Additional Advocate General on the observations of Apex Court in the case of Maharashtra State Board of Secondary and Higher Secondary Education (supra) are very apt:

" It is a common legislative practice that the legislature may choose to lay down only the general policy and leave to its delegate to make detailed provisions for carrying into effect the said policy and effectuate the purposes of the Statute by framing rules/regulations which are in the nature of subordinate legislation "

Similarly the reliance on the judgment in the case of Shankaranarayana Construction Co. and Others v. State of Karnataka and another reported in (2004) 270 ITR 356 is also of no avail. It was held that where the language of the statute is clear and ambiguous there can be no scope to invoke the doctrine of ' Casus Omissus '.In the present case, as noticed supra, the Rules do not in any way have the effect of inserting words in the statute which were left out by providing the Assistant Commissioner a role in convening the meeting. The Rules only provide for the procedure to implement the legislative policy conferring rights to move a motion of no-confidence under Section 49 of the Act. Such prescription of procedure is legally justified.

16. While it is contended that Section 49 (1) of the Act provides for moving a motion of no-confidence " in accordance with the procedure as may be prescribed " and that such procedure is provided for under Section 52 of the Act, which specifies as to how a meeting is to be convened. The said contention is liable to be rejected. It is to be noticed that the procedure for convening a meeting under Section 49 (1) of the Act is by a notice of resolution signed by not less than one-half, which earlier was one-third of the total number of members with ten days ' notice. However, Section 52 of the Act provides for convening a meeting at the written request of not less than one-third of the total number of members and within fifteen days. The apparent contradiction in the procedure prescribed under Section 49 and Section 52 of the Act would itself indicate that the procedure prescribed as referred to under Section 49 of the Act cannot be the procedure under Section 52 of the Act. It is also settled principle of interpretation that original provisions of an Act cannot be deemed to be contradictory to each other. Accordingly, the contention of the petitioner that the procedure prescribed refers to the procedure under Section 52 of the Act, cannot be accepted.

17. It is also clear as contended by the learned Additional Advocate General that Section 49 of the Act is the self contained code alongwith its Rules as rightly held in the case of M.Muniyappa (supra) and if that were to be so, the procedure prescribed for moving a motion of no-confidence as detailed under the Rules are self contained and there is no question of having recourse to the procedure prescribed under Section 52 or under Section 62 of the Act.

18. It must also be noted that Section 52 envisages transaction of business and Section 62 envisages convening of a meeting for other purposes, which is entirely different from convening of a meeting to move a motion of no-confidence against Adhyaksha and Upadhyaksha. In fact, unlike Section 141 (6) of the Act which relates to

the procedure for moving a motion of no-confidence as regards Adhyaksha and Upadhyaksha of Taluk Panchayat and Section 180 (6) of the Act which provides for moving a motion of no confidence as against Adhyaksha and Upadhyaksha of Zilla Panchayat, which specifically provide for a meeting to be presided by the Adhyaksha and Upadhyaksha as the case may be Section 49 of the Act which relates to the motion of no-confidence against Adhyaksha or Upadhyaksha of the Grama Panchayat is significantly silent as to who should preside over such meeting. Section 49 (1) of the Act stipulates that a motion of no confidence can be passed at a " meeting specially convened for the purpose in accordance with the procedure as may be prescribed ". The rules framed, provide for the procedure to call for " meeting by the Assistant Commissioner " and hence, the rules framed in accordance with the power conferred and cannot be said to be ultra vires the Act. Accordingly, all the contentions of the petitioner attacking the Rules made as being ultra vires the parent Act are liable to be rejected.

19. There are no other contentions that are advanced as regards to the non-adherence to the Rules in the specific case on hand and accordingly, no case is made out for interference in the facts of the case vis- à-vis the Rules now held to be valid.

Accordingly, the petition is rejected, subject to the above observations.