

THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY

WRIT PETITION NO.31024 OF 2021

ORDER:

Challenging the issuance of Form-IV notice dated 15.11.2021 scheduling the meeting on 02.12.2021 for the purpose of moving the motion of no-confidence, the present Writ Petition is filed.

When the matter came up for admission, on 30.11.2021, this Court has granted interim orders staying the Form-IV notice dated 15.11.2021 including the proposed meeting scheduled on 02.12.2021.

Subsequently, the Ward members have got themselves impleaded as respondents *vide* order dated 21.01.2022 in I.A. No.3 of 2021.

Heard Sri G. Narender Reddy, learned counsel for the petitioner, the learned Government Pleader for Panchayat Raj, Sri K.S. Murthy, learned counsel, and Sri M. Ram Gopal Rao, learned Standing Counsel, appearing for the respondents.

Learned counsel for the petitioner has stated that even though Andhra Pradesh Panchayat Raj Act, 1994, was repealed by the New Act i.e. Telangana Panchayat Raj Act, 2018 (in short 'the New Act'), yet the official respondents have issued the impugned Form-IV notice under Section 245 of the Old Act. Therefore, the same is not only bad, illegal, without jurisdiction, but contrary to the provisions of the

New Act. Learned counsel has stated that the Form-IV notice, dated 15.11.2021, scheduling the meeting on 02.12.2021, was served on the petitioner only on 24.11.2021, thereby violating the mandatory provisions of Rule 3 of G.O.Ms.No.200, P.R. & R.D. (Mandal-I), dated 28.04.1998, which stipulates that there should be a clear 15 days gap between the date of notice and the date of the scheduled meeting. It is further stated that no notice of intention to move the no-confidence motion was given by the Ward members to the Revenue Divisional Officer (RDO) concerned along with Form-I. Therefore, the entire exercise undertaken by the RDO in going forward only on the basis of the Form-I Notice without there being any notice of intention to move the no-confidence motion against the petitioner is illegal, bad, contrary to the provisions of the Act and the Rules framed thereunder. The learned counsel has stated that as per the provisions of the Act as well as the Rules, the notice of intention to move the no-confidence motion should be given to the RDO along with Form-I and thereafter only the RDO can initiate the process by issuance of Form-IV notice. In this particular case, no such notice of intention to move the no-confidence motion was given by the Ward Members, as contemplated under Section 30 of the Act and Rule 2 of G.O. Ms.No.200, P.R. & R.D. (Mandal-I), dated 28.04.1998, was not given by the Ward members and only the Form-I was presented by the members before the RDO concerned. Therefore, the issuance of

Form-IV notice by the RDO only on the basis of Form-I without the notice of intention to move the no-confidence motion does not arise. Therefore, the learned counsel has prayed this Court to allow the present Writ Petition. In support his submissions, the learned counsel has relied on the unreported judgment rendered by a learned Single Judge of this Court in W.P. Nos.19060 and 21746 of 2008, dated 29.10.2008.

Both the learned Government Pleader as well as the learned counsel appearing for the unofficial respondents have vehemently opposed the very maintainability of the Writ Petition and contended that the requirements of law contemplated under Rules 2 and 3 of the G.O. Ms. No.200, P.R. & R.D. (Mandal-I), dated 28.04.1998, are only directory in nature and not mandatory. The learned Government Pleader has stated that there is no fixed format for initiating the no-confidence motion against the Sarpanch or Upa-Sarpanch. As long as the sum and substance of the alleged motion of no-confidence can be culled out from the intention of the ward members, it would suffice and the intention of the process of no-confidence cannot be scuttled merely on the ground that the notice of no-confidence is not in the prescribed format or not presented by the Ward members. It is further stated that the presentation of Form-I in the prescribed proforma is itself sufficient to initiate the motion of no-confidence by the RDO concerned and no

separate notice of intention to move the no-confidence motion be given. The intimation of no-confidence in prescribed Form-I has only to be taken into consideration for initiating the process. It is further stated that the intention to move the no-confidence, which is made in the prescribed format i.e. Form-I, is more than sufficient for the official respondents to initiate the process of no-confidence against the Sarpanch or Upa-Sarpanch. The Form-IV notice is issued only for the purpose of convening the meeting and neither any debate nor any discussion with regard to the reasons for issuance of the no-confidence motion are contemplated under the Act or the Rules. That there are absolutely no grounds for the petitioner to challenge the issuance of Form-IV notice and the Writ Petition is liable to be dismissed. Learned Government Pleader has further stated that as per the proviso to Rule 3, if any stay is granted by the High Court and the scheduled meeting of no-confidence is not held, the authorities concerned can schedule the meeting at a later date, once the stay is vacated, as contemplated under the proviso to Rule 3 and complete the process of no-confidence motion.

While adopting the above arguments of the learned Government Pleader, the learned counsel appearing on behalf of the unofficial respondents has further stated that the unofficial respondents have given the notice of intention to move the no-confidence motion along with the Form-I but the authorities have

misplaced the same. Reliance is placed on the judgment of the Division Bench in **Yeni Reddy Raghava Reddy vs. Government of A.P.**,¹ and of the learned Single Judge in **Bandila Audi Seshamma vs. Government of Andhra Pradesh**² and **Tiparathi Chandra Mouli vs. Government of Andhra Pradesh & Ors**³ to buttress their contentions.

This Court on 21.07.2022 heard the matter finally and directed the learned Government Pleader to produce the record. Accordingly, record has been produced.

A perusal of the record shows that in this particular case, out of 12 ward members, 9 ward members have presented the no-confidence motion in prescribed Form-I as per the Rules framed under G.O.Ms.No.200 and the same was delivered by two ward members, who signed the said notice, to the RDO concerned. Thereafter, the Form-IV notice, dated 15.11.2021, has been issued by the RDO concerned scheduling the meeting of no-confidence motion on 02.12.2021. The learned counsel for the petitioner has stated that though the said Form-IV notice is dated 15.11.2021, the same was served on the petitioner only on 24.11.2021 and there is no 15 days clear mandate between the date of service of notice in Form-IV and the date of the scheduled meeting, as contemplated under Rule 3

¹ 1999 (2) ALD 298 (DB)

² 2005 (2) ALD 316

³ 1998 (1) ALD 431

of the Rules under G.O.Ms.No.200 and therefore the Form-IV has to be set aside. The question as to whether there should be 15 days gap between the date of service of the said notice and the scheduled meeting came up for consideration before a Full Bench of this Court in ***Smt. K. Sujatha vs. The Government of Andhra Pradesh***⁴, wherein, at para 28, it is held as under:

“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.”

In view of the above settled proposition of law, the ground urged by the petitioner that the Form-IV notice has to be set aside as there is no clear 15 days gap between the date of service of notice in

⁴ 2004 (2) APLJ 330 (HC)

Form-IV and the date of scheduled meeting is not a valid ground and the same is rejected. In the absence of any proof to show that the petitioner was prejudiced in any manner by the late service of notice, the impugned notice cannot be set aside on this ground.

Insofar as the second contention of the petitioner that the wrong provision of law has been mentioned in notice under Form-IV is concerned, it is to be seen that even though the Old Panchayat Raj Act, 1994, was repealed by the Telangana Panchayat Raj Act, 2018, no new Rules have been framed by the Government under the New Act of 2018. As per the provisions of Section 295 (3), the Rules which are made under the Old Act are saved and applicable, if they are not inconsistent with the provisions of the New Act. It is pertinent to note that the Form-I presented by the Ward members is under the New Act. Merely because the wrong provision of law is mentioned in Form-IV notice, the same cannot be a ground to vitiate the entire process. This Court as well as the Hon'ble Supreme Court, in a catena of cases, have held that as long as the power is vested with the authority, the mere quoting of the wrong provision of law will not vitiate the proceedings or the exercise of power by the authorities concerned. Admittedly, the petitioner is not disputing that the authorities do not have the power to issue the Form-IV notice or hold the meeting for the no-confidence motion under the provisions of the Act.

In ***State of Karnataka vs. Muniyalla***⁵, the Hon'ble Supreme Court has held that *it is now well-settled that merely because an order is purported to be made under a wrong provision of law, it does not become invalid so long as there is some other provision of law under which the order could be validly made. Mere recital of a wrong provision of law does not have the effect of Invalidating an order which is otherwise within the power of the authority making it.*

In ***P.K. Palanisamy vs. N. Arumugham***⁶, the Hon'ble Supreme Court has held as under:

“27. Section 148 of the Code is a general provision and Section 149 thereof is special. The first application should have been filed in terms of Section 149 of the Code. Once the court granted time for payment of deficit court fee within the period specified therefor, it would have been possible to extend the same by the court in exercise of its power under Section 148 of the Code. Only because a wrong provision was mentioned by the appellant, the same, in our opinion by itself would not be a ground to hold that the application was not maintainable or that the order passed thereon would be a nullity. It is well-settled principle of law that mentioning of a wrong provision or non-mentioning of a provision does not invalidate an order if the court and/or statutory authority had the requisite jurisdiction therefor.”

In ***N. Mani vs. Sangeetha Threatre***⁷, the Hon'ble Supreme Court has held as under:

⁵ AIR 1985 SC 470

⁶ (2009) 9 SCC 173

⁷ (2004) 12 SCC 278

“9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does not exist and can be traced to a source available in law.”

As seen from the record, the Form-I notice is issued under the provisions of the New Act of 2018 whereas the Form-IV notice is issued under the Old Act, but that itself cannot be a ground to set aside the same. Therefore, it cannot be said that the entire exercise initiated by the authorities stood vitiated.

Therefore, the above said ground is also not available to the petitioner for setting aside the impugned Form-IV notice and the said contention is rejected.

Thirdly, the learned counsel for the petitioner has drawn the attention of this Court to the provisions of the New Act of 2018, more particularly, Section 30 thereof, and also the Rules framed under G.O.Ms.No.200, more particularly, Rules 2 and 3 thereof to contend that as per the provision of the Act, the Ward members should first express their intention of no-confidence by way of proposal and along with the notice of the said proposal they have to present the prescribed Form-I before the RDO concerned and only then the RDO can issue the Form-IV.

In order to appreciate the above contention, it is necessary to extract Section 30 of the New Act of 2018 and relevant portion of the rules framed under G.O.Ms.No.200, P.R. & R.D. (Mandal-I), dated 28.04.1998.

Section 30 of the New Act of 2018 reads as under:

“Motion of no-confidence in Upa-Sarpanch:- (1) A motion expressing want of confidence in the Upa-Sarpanch, may be made by giving a written notice of intention to move the motion in such form and to such authority as may be prescribed, signed by not less than one half of the total number of members of the Gram Panchayat, and further action on such notice shall be taken in accordance with the procedure prescribed:

Provided that no notice of motion under this section shall be made within two years of the date of assumption of office by the Upa-Sarpanch:

Provided further that no such notice shall be made against the same Upa-Sarpanch more than twice during his term of office and the second no-confidence motion shall not be initiated before the expiry of two years from the date of first no-confidence motion.”

Rules 2 and 3 of the Rules made under G.O.Ms.No.200, P.R. & R.D. (Mandal-I), dated 28.04.1998, read as under:

“2. A notice of the intention to make the motion shall be in Form-I, in Form-II annexed to these rules either in English or in Telugu or in Urdu language, signed by not less than one-half of the total number of members of the Gram Panchayat, [Mandal Praja Parishad or Zilla Parishad] as the case may be, **together with a copy of the proposed motion, and shall be delivered in person by any two of the members who signed such notice**, to the Revenue Divisional Officer, Sub-collector or Assistant Collector, as the case may be, having jurisdiction in the case of Upa-Sarpanch of a Gram

Panchayat; or President and Vice-President of a [Mandal Praja Parishad]; or to the District Collector in the case of Chairman and Vice-Chairman of [Zilla Praja Parishad] as the case may be;

“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 Praja Parishad] ... the [Zilla Praja Parishad], as the case may be, on a date appointed by him which shall not be 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 Praja Parishad or Zilla Praja 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, or in Form-V or in Form-VI annexed to these rules either in English or in Telugu or in Urdu language, whichever is applicable.”

(emphasis added)

A perusal of the above extracted Section and the Rules shows that the Ward members shall have to give the copy of the notice to move the proposed motion of no-confidence and along with the prescribed Form-I to the RDO concerned and the RDO will then initiate the motion of no-confidence by issuing Form-IV scheduling the date of meeting. Admittedly, in the case on hand, the record does not reveal that the intention to move the no-confidence motion has been given by the Ward members, they have given only the Form-I notice to the RDO concerned. It is pertinent to note that the official respondents as well as the unofficial respondents have taken divergent stand in their counter with regard to enclosing of the notice of intention to move the no-confidence by the Ward members along

with the Form-I to the RDO concerned. There is no whisper in the counter filed by the official respondents as to the receipt of any proposal or notice of intention to move the no-confidence motion by the Ward members along with the Form-I, whereas in the counter filed by the unofficial respondents, it is stated that they have given the notice of intention to move the no-confidence motion along with Form-I to the RDO concerned, but the same has been misplaced in the office of the RDO. The record produced by the learned Government Pleader does not indicate that any such notice of intention to move the no-confidence proposal, as contemplated under Rule 2 of G.O.Ms.No.200, P.R. & R.D. (Mandal-I), dated 28.04.1998, was given by the Ward members except the Form-I in the prescribed format.

A learned Single Judge of this Court in W.P. Nos.19060 and 21746 of 2008, dated 29.10.2008, has held as under:

“12. Various steps prescribed by the principal or subordinate legislature, be it in relation to election of representatives for the statutory or local bodies, or matters relating thereto, need strict compliance. For instance, not only the manner in which the elections must be held, but also meticulous details to be followed in the process of voting, counting, etc, are stipulated, under the relevant provisions. Any deviation there from, which had the effect of diluting the mandate, would nullify the election process. Section 245 of the Act and the Rules are akin to election process, may be in the reverse direction. Compared to the procedure prescribed for election, the one stipulated for dislodging an elected representative must be complied in a more meticulous manner.

This is in addition to the well established principle that where law requires a particular thing to be done in a particular manner, it must be in that manner, or not at all.”

Even though reliance is placed by the learned Government Pleader in ***Bandila Audi Seshamma (referred supra)*** to contend that such a procedure is not required and that intention is sufficient, it is to be noted that in that particular case the intention to move the no-confidence along with Form-II notice was given and on the basis of which the Form-IV notice was issued. The writ petitioner therein had approached the Court stating that the copy of the proposed motion of no-confidence was not enclosed along with the Form-II as well as Form-IV notices, which were served on him, and therefore sought to declare the said notices under Form-II and Form-IV as invalid. This Hon’ble Court in that context has held that it would suffice if the intention to move the no-confidence motion is there and there is no prescribed format for giving the said letter and thereby dismissed the said Writ Petition. Therefore, the above judgment relied by the learned Government Pleader is not applicable to the facts of the present case.

Insofar as the another judgment relied by the learned Government Pleader in ***Yeni Reddy Raghava Reddy (referred supra)*** is concerned, it is a case with regard to the supply of the copy of the proposed motion of no-confidence annexed to the Form-IV notice and in that context, the Court has held as under:

“8. The notice was served though the copy of the proposed motion of No-Confidence is not attached with the said notice. Be that as it is, nothing has been pointed out at the Bar whereby, by the Legislature, it has been provided that non-compliance of processual or procedural provisions of service of notice or the form of notice would render the vote of no-confidence invalid. The object of procedure law is to serve the person or apprise the person that a vote of no-confidence would be held on a particular date and at a particular time for consideration of the motion of No-Confidence. It is only the intention of the proposer which has to be intimated to the members, which has been categorically made in the present case. It cannot be assumed that the petitioner was not aware of the object of the meeting, time of meeting and place of meeting. There is nothing on record from which we can assume that even the copy of the proposed motion was not enclosed. If it would have been so, the members would have approached the authority stating that the notice does not carry the copy which is stated to have been enclosed with the notice. Official acts are presumed to have been done in due discharge of the duty as envisaged and contained in the notice. There is no presumption that a copy of the motion in fact been enclosed unless contrary is proved. There is nothing to prove contrary to the record. There is no dispute that eight members out of the twelve members had proposed to move a vote of No-Confidence. The meeting was already held and it is a fact accomplished that out of the twelve members, eight have voted in favour of the no-confidence motion. The notice being only directory, the mere use of the word “shall”, cannot give rise to it being a mandatory in the facts and circumstances of the case, and specially when no consequence for non-compliance of the requirements of the notice in Form-V has been provided by legislation. In view of this, we find no force in the submission of the learned Counsel for the petitioner that the copy of the proposed motion of no-confidence has been enclosed with Form-V notice.”

But, in this particular case, admittedly, there is no whisper in the counter of the official respondents that the notice of intention of moving the no-confidence motion was submitted by the Ward members along with Form-I notice to the RDO concerned nor there is a copy of the said proposal in the record. The record reveals that only the Form-I notice in the prescribed format was given by the Ward members and there is no copy of the notice of intention to move the no-confidence motion. Thereafter, the RDO has issued the Form-IV on the basis of only the Form-I presented by the Ward members without there being any copy of the notice of intention to move a no-confidence motion. Therefore, the same has to be held as not only illegal, arbitrary, without jurisdiction but contrary to the provisions of the Act and the Rules framed thereunder and on this ground alone the impugned notice issued in Form-IV is liable to be set aside and the same is accordingly set aside.

Having regard to the law laid down by this Court in W.P. Nos.19060 and 21746 of 2008, dated 29.10.2008, this Court is of the opinion that in the absence of any notice of intention to move no-confidence motion by the ward members against the petitioner, the presentation of only the Form-I cannot be the basis for issuance of Form-IV. The procedure prescribed stipulates that the copy of the intention to move the no-confidence should accompany by the Form-I. But, in this case, as stated above, there is no notice of intention to

move the no-confidence motion given by the Ward members. The contention of the unofficial respondents that they have given the copy of the intention to move the no-confidence motion along with the Form-I is only an afterthought made to wriggle out of the situation. No record has been filed to substantiate the above pleading.

Coming to the judgment in ***Tiparthy Chandra Mouli (referred supra)*** relied by the learned Government Pleader where it stated that the once the intention of no-confidence is moved, the same has to be taken to its logical conclusion is concerned, there is no quarrel with the said proposition of law. But, admittedly, in this case in the absence of issuance of any resolution/notice of intention to move a no-confidence motion along with Form-I, the presentation of only the Form-I notice by the Ward members to the RDO is totally contrary to the prescribed procedure under the Act as well as the Rules. When the Act/Rules prescribes a particular procedure to be done, the same has to be adhered too strictly in letter and spirit. Therefore, the said judgment is of no use to the respondents herein.

For the afore-stated reasons and having regard to the law laid down by this Court in W.P. Nos.19060 and 21746 of 2008, dated 29.10.2008, the Writ Petition is allowed and the impugned Form-I notice as well as the Form-IV notice dated 15.11.2021 are set aside.

Consequently, miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

A. ABHISHEK REDDY, J

29.07.2022

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Note: L.R. Copy to be marked.