

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI

WRIT APPEAL Nos.38, 42, 44, 46, 47 and 51 of 2024

COMMON JUDGMENT: *(per the Hon'ble the Chief Justice Alok Aradhe)*

Mr. K.Vivek Reddy, learned Senior Counsel, and Mr. B.Mayur Reddy, learned Senior Counsel, appear for the appellants.

Mr. Pasham Krishna Reddy, learned Government Pleader for Municipal Administration Department appears for respondent Nos.1 and 2.

2. The issue involved in these intra-court appeals pertains to the validity of the proposed motion of no-confidence moved against the appellants. These intra court appeals emanate from a common order dated 06.10.2023 passed by the learned Single Judge and therefore, the writ appeals were heard together and are being disposed of by this common judgment.

3. Facts giving rise to filing of these appeals lie in a narrow compass. The appellants were elected as Chairpersons/Vice Chairpersons of respective municipal councils in the elections held in the month of January,

2020. Motions of no confidence on various dates i.e., 28.01.2023, 03.02.2023, 04.02.2023, 06.10.2023 were moved against the appellants. Thereupon the appellants filed writ petitions in which validity of the proposed motions of no-confidence was challenged *inter alia* on the ground that in the absence of any provision under the Telangana Municipalities Act, 2019 (hereinafter referred to as, 'the 2019 Act'), the no-confidence motion could not be considered against the appellants. It was also asserted that in the absence of any rule providing for consideration of proposed motions of no-confidence, the same is vitiated in law and is violative of Section 37 of the 2019 Act.

4. The learned Single Judge by a common order dated 06.10.2023 *inter alia* held that the Telangana Municipalities Act, 1965 (hereinafter referred to as 'the 1965 Act') was repealed and the 2019 Act was enacted with an object to make urban local bodies as institutions of the self governance. It was further held that the Telangana Municipalities (Motion of No-Confidence in Chairperson/ Vice Chairperson) Rules, 2008 (hereinafter referred to as, 'the 2008 Rules'), framed under the 1965 Act, are saved under Section 299 of the 2019 Act, and there is no

inconsistency between Section 37 of the 2019 Act and Section 46 of the 1965 Act. Accordingly, the writ petitions were dismissed. In the aforesaid factual background, these appeals have been filed.

5. Learned Senior Counsel for the appellants in W.A.Nos.42, 44, 46 and 47 of 2024 submitted that Chairperson and Vice Chairperson of a municipality can only be removed in accordance with the provisions of the 2019 Act. It is further submitted that Section 46 of the 1965 Act contained a comprehensive provision which *inter alia* provides for Notice of motion, Notice of meeting, Timeline for no-confidence motion, Presiding Officer, Quorum, Eligibility to vote, Manner of voting, Issuance of Party Whip, Majority required for motion to pass, Intimation to Government and Consequential removal by Government. However, the 2019 Act is silent on the critical aspects relating to motion of no-confidence, Notice of meeting, Timeline for no-confidence of motion, Presiding Officer, Quorum, Eligibility to vote, Manner of voting, Issuance of Party Whip, Majority of required for motion to pass, Intimation to Government and Consequential removal by Government. It is also urged that the

substantive right or obligations can be obliterated by the statute and not by the Rules. In support of aforesaid submissions, reliance has been placed on a decision of Constitution Bench of Supreme Court in **Indian Young Lawyers Association v. State of Kerala**¹.

6. It is also urged that in the absence of the mechanism to deal with the proposed motion of no confidence under Section 37 of the 2019 Act read with the 2008 Rules framed under the 1965 Act, the motion of no confidence cannot be passed against the appellants.

7. Learned Senior Counsel for the appellants in W.A.Nos.38 and 51 of 2024 submitted that the legislative silence cannot be treated at par with the inconsistency. It is further submitted that the legislature has not enacted *pari materia* provision like Section 46(2) to 46(6) of the 1965 Act while enacting the 2019 Act and has only enacted Section 46(1) under the 2019 Act, namely, Section 37. It is also urged that under Section 20(3) of the 2019 Act, the appellants have right to continue in office and they can be removed from their office only in accordance with the

¹ (2019) 11 SCC 1

provisions of the 2019 Act. Attention of this Court has been invited to Section 67 of the 2019 Act and it is contended that Section 67, which deals with powers of the Government to remove the Chairperson, Vice Chairperson or Ward Members of a Municipality and it has been contended that the same does not include the power to remove the aforesaid office bearers on passing of motion of no-confidence. It is urged that the provisions of Sections 37 of the 2019 Act and 46 of the 1965 Act are inconsistent and therefore provisions of Section 46 of the 1965 Act are not saved under Section 299 of the 2019 Act.

8. On the other hand, learned Government Pleader for Municipal Administration has submitted that the Writ Petitions were premature and the appellants did not challenge the provisions of either the 2019 Act or the 2008 Rules. Learned counsel has supported the common order passed by the learned Single Judge and has submitted that the same does not call for any interference in these intra court appeals.

9. We have considered the rival submissions made on both sides and have perused the record.

10. The Andhra Pradesh Municipalities Act, 1965 was an Act to consolidate and amend the law relating to municipalities in the erstwhile State of Andhra Pradesh. The Act was enacted with an object to provide for more scope for the elected representatives on the municipal councils so that they can have greater voice and control in the administration and to ensure that the control of the Government over the municipal bodies is minimised to the extent possible. Chapter 3 of the 1965 Act provided for powers and functions of the municipal authorities. Section 46 deals with motion of no-confidence in Chair Person/Vice Chairperson.

11. In exercise of powers conferred under Section 326(1) read with Section 46 of the 1965 Act, Government of Andhra Pradesh had made the Rules, namely the Andhra Pradesh Municipalities (Motion of No-confidence in Chairperson/Vice-Chairperson) Rules, 2008 which provide for the manner in which a motion of no-confidence has to be considered against the Chairperson/Vice Chairperson.

12. The provisions of the 1965 Act were repealed by the Telangana Municipalities Act, 2019 which is an Act

enacted with an object to consolidate and provide for the constitution of municipalities other than the Greater Hyderabad Municipal Corporation in the State of Telangana in terms of Part IX A of the Constitution of India and for the matters connected therewith and incidental thereto. Section 37 of the 2019 Act provides for motion of no-confidence in Chairperson/Vice Chairperson.

13. Section 299 of the 2019 Act deals with Repeal and Savings. For the facility of reference, Section 299 is extracted below:

299. Repeal and savings- (1) On and from the commencement of this Act, the Telangana Municipalities Act, 1965 (Act No. 6 of 1965) and the Telangana Municipal Corporations Act, 1994 (Act 25 of 1994) are repealed.

(2) On such repeal, the provisions of sections 8 and 18 of the Telangana General Clauses Act, 1891, shall apply, provided that on such repeal, rules or provisions existing are not inconsistent with this Act.

(3) Notwithstanding the repeal of the Acts referred in sub-section (1) the appointment, notification, order, scheme, form, notice, rule, or bye-law, made or issued, and license or permission granted under the Acts, shall, in so far as it is not inconsistent with the provisions of this Act, shall continue in force and be deemed to have been made, issued or granted under the

provisions of this Act, unless it is lapsed or superseded by any appointment, notification, order, scheme, form, notice, rule or bye-law made or issued, and any license or permission granted under the said provisions.

(4) The members of any Council and Corporation holding office at the commencement of this Act shall be deemed to have been elected as members of that Council and Corporation under this Act, and subject to provisions of section 10, continue to hold office of members until the expiration of their term under the provisions which were applicable to them immediately before such commencement.

(5) Any division of the Municipality into wards, made or deemed to have been made under the Telangana Municipalities Act, 1965 or Telangana Municipal Corporations Act, 1994 and in force at the commencement of this Act, shall be deemed to be the division of the Municipality into wards made under this Act; and the members representing the wards shall, subject to the provisions under sub-section (4), be deemed to represent them on and from the commencement of this Act.

Thus, from perusal of Section 299 of the 2019 Act, it is evident that the 2008 Rules framed under the 1965 Act are saved, provided the same are not inconsistent with the provisions of the 2019 Act. Admittedly, under the 2019 Act, the rules have not been framed. The 2008 Rules lay down the manner of consideration of a motion of no-confidence

and are not inconsistent with either Section 37 of the 2019 Act or any of the provisions of the 2019 Act.

14. In order to examine whether the provisions of Section 37 of the 2019 Act and Section 46 of the 1965 Act are inconsistent with each other, we deem it proper to reproduce the same in juxta position.

Section 37 of the 2019 Act	Section 46 of the 1965 Act
<p>37. Motion of no confidence in Chairperson and Vice-Chairperson-</p> <p>A motion expressing want of confidence in the Chairperson and/or the Vice-Chairperson may be made by giving a written notice of intention to move the motion, in such form as specified under the Rules, signed by not less than one-half of the total number of members of the Municipality having right to vote, together with a copy of the proposed motion, to the District Collector concerned, in accordance with the procedure prescribed under the Rules:</p> <p>Provided that no notice of motion under this section</p>	<p>46. Motion of no confidence in Chairperson/Vice-Chairperson:-</p> <p>(1) A motion expressing want of confidence in the Chairperson otherwise than directly elected or Vice-Chairperson may be made by giving a written notice of intention to move the motion, in such form as may be specified by the Government, signed not less than one half of the total number of members of the Council having right to vote, together with a copy of the proposed motion to the District Collector concerned in accordance with the</p>

shall be made within three (3) years of the date of assumption of office by the person against whom the motion is sought to be moved:

Provided further that if the motion is not carried by two-thirds majority or if the meeting could not be held for want of a quorum, no notice of any subsequent motion expressing want of confidence in the same person shall be made until after the expiration of one year from the date of such first meeting.

procedure prescribed:

Provided that no notice of motion under this section shall be made within three (3) years of the date of assumption of office by the person against whom the motion is sought to be moved:

Provided further that if the motion is not carried by two-third majority as prescribed or if the meeting could not be held for want of a quorum, no notice of any subsequent motion expressing want of confidence in the same person shall be made until after the expiration of one year from the date of such first meeting:

Provided also that the membership of a suspended member shall also be taken into consideration for computing the total number of members and he shall also be entitled to vote in a meeting held under this section.

(2) The District Collector shall, then convene

a meeting for the consideration of the motion at the office of Municipal Council on the date appointed by him which shall not be later than thirty days from the date on which the notice under sub-section (1) was delivered to him. He shall give to the Members, Chairperson or Vice-Chairperson as the case may be and the Ex-Officio Members, 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 such form as may be prescribed by the Government and such notice shall be delivered as may be specified.

Explanation:-In

computing the period of thirty days specified in this sub-section, the period during which a stay order, if any, issued by a competent Court on a petition filed against a notice under sub-section (1) is in force shall be excluded.

(3) The District

Collector or the Revenue Divisional Officer nominated by the District Collector (hereinafter referred to as presiding officer) shall preside at such meeting. The quorum for such meeting shall be two-thirds of the total number of members. If within half an hour after the time appointed for the meeting, there is no quorum for the meeting, the Presiding Officer shall adjourn the meeting to some other time on the same date and notify the same in the notice board of the Council. If there is no quorum at the adjourned time of the same day, no further meeting shall be convened for consideration of that motion and the meeting shall stand dissolved and the notice given under subsection (1) shall lapse.

(4) As soon as the meeting convened under this section commences, the said presiding officer shall read only the motion for the consideration of which the meeting has been convened and shall put it to vote

without any debate. The voting shall be by show of hands duly obeying the party whip given by such functionary of the recognized political party in the manner prescribed:

Provided that a member voting under this sub-section in disobedience of the party whip shall cease to hold office forthwith and the vacancy caused by such cessation shall be filled as a casual vacancy.

(5) A copy of the minutes of the meeting together with a copy of the motion and the result of the voting thereon shall be forwarded immediately on the termination of the meeting by the said presiding officer to the District Collector. The District Collector shall forward the same along with his remarks to the Government.

(6) If the motion is carried with the support of two-thirds majority of the total number of the members including the *ex-officio* members as on the date of

	<p>the meeting, the Government shall by notification remove the Chairperson or Vice-Chairperson as the case may be from office and the resultant vacancy shall be filled in the same manner as a casual vacancy.</p> <p>Explanation I:- For the removal of doubts, it is hereby declared that for the purpose of this section the expression "total number of members" means, all the members who are entitled to vote in the election to the office concerned including the <i>ex-officio</i> members.</p> <p>Explanation II:- For the purposes of the section, in the determination of two-thirds of the total number of members, any fraction below 0.5 shall be ignored and any fraction of 0.5 or above shall be taken as one.</p>
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Thus, from the perusal of provisions of Section 46(1) of the 1965 Act and Section 37 of the 2019 Act, it is evident that the same are in *pari materia*. Thus, in the latter Act, i.e., 2019 Act, similar language has been used

for the same purpose and for same object and therefore, it is undoubtedly true that in Section 37 of the 2019 Act, there are no *pari materia* provisions like Section 46(2) to 46(6) of the 1965 Act. However, the legislative intention to make a provision for motion of no-confidence is axiomatic. Mere omission of some of the statutory provisions, in the absence of any contrary legislative intention, cannot be held to be an inconsistency between two statutory provisions. The contention that there is an inconsistency between Section 37 of the 2019 Act and Section 46 of the 1965 Act is misconceived.

15. As stated supra, the 2008 Rules framed in exercise of powers under Section 326(1) read with Section 46 of the 1965 Act are saved. Section 37 of the 2019 Act and the 2008 Rules framed under the 1965 Act have to be read in conjunction.

16. It is trite law that the Court should not put an interpretation to a statutory provision which renders the provisions of the statute unworkable. Section 37 of the 2019 Act read together with 2008 Rules makes it clear that the same provide for time line for convening a meeting,

notice of meeting, for appointment of presiding officer, quorum of meeting, manner of voting, issuance of whip, intimation to Government. From perusal of the second proviso to Section 37 of the 2019 Act, it is evident that the motion of no-confidence has to be carried by two-thirds majority. Therefore, the contention that the required majority to consider the motion of no-confidence is not provided, which was prescribed under Section 46(6) of the 1965 Act, does not deserve acceptance and is misconceived.

17. Similarly, the contention that the 2019 Act is silent on the critical aspects relating to motions of no-confidence also does not deserve acceptance. Another contention that in the absence of any provision either under the 2019 Act or under the 2008 Rules, the motions of no confidence cannot be considered against the appellants is misconceived. Rules 12 and 13 of the 2008 Rules provide that the presiding officer has to forward a copy of the minutes of the meeting together with a copy of the motion and the result of the voting thereon immediately to the District Collector. Thereupon the power to remove the Chairperson/Vice Chairperson on passing of a motion of

no-confidence against them, which even otherwise is incidental or ancillary in nature, can be exercised by the State Government in the absence of any contradictory legislative intention. If the submission urged on behalf of appellants is accepted, Section 37 of the 2019 Act would be rendered negatory and a dead letter, which is contradictory to the well settled rules of interpretation.

18. For the aforementioned reasons, we agree with the conclusions arrived at by the learned Single Judge.

19. In the result, the appeals fail and are hereby dismissed.

Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

ALOK ARADHE, CJ

ANIL KUMAR JUKANTI, J

31.01.2024
Pln