



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 17<sup>TH</sup> DAY OF NOVEMBER, 2023**

**BEFORE**

**THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ**

**WRIT PETITION NO.25051 OF 2023 (LB-RES)**

**BETWEEN:**

P. REETHI MUNE GOWDA  
W/O. J. MUNE GOWDA,  
AGED 40 YEARS,  
R/A NO.10, BAGALUR VILLAGE,  
BAGALUR POST, JALA HOBLI,  
YELAHANKA TALUK,  
BENGALURU - 562 149.

... PETITIONER

(BY SRI ASHOK HARNAHALLI, SENIOR COUNSEL FOR  
SRI B. RAMESH, ADVOCATE)

**AND:**

1. THE STATE OF KARNATAKA  
DEPARTMENT OF RURAL DEVELOPMENT  
AND PANCHAYAT RAJ,  
M.S. BUILDING,  
DR. AMBEDKAR VEEDHI,  
BENGALURU - 560 001.  
REP. BY PRINCIPAL SECRETARY.
2. THE ASSISTANT COMMISSIONER  
BENGALURU NORTH SUB-DIVISION,  
KANDHA BHAVAN, K.G. ROAD,  
BENGALURU - 560 009.
3. BAGALURU GRAMA PANCHAYATH  
BAGALURU VILLAGE,  
JALA HOBLI, YELAHANKA TALUK,  
BENGALURU - 502 149  
REP. BY ITS PANCHAYATH DEVELOPMENT OFFICER.
4. A. KEMPEGOWDA  
S/O. LATE S. ANJANAPPA,  
AGED 42 YEARS,  
MEMBER OF BAGALURU GRAMA PANCHAYATH,





5. PARVEEN TAJ  
W/O. BABA JHAN,  
MAJOR IN AGE,  
MEMBER OF BAGALURU GRAMA PANCHAYATH,
6. B.N. NAGA VENI  
W/O. B.S. PILLEGOWDA,  
MAJOR IN AGE,  
MEMBER OF BAGALURU GRAMA PANCHAYATH,
7. B.S. PRABHUSWAMY  
S/O. B.S. SIDESHAPPA,  
MAJOR IN AGE,  
MEMBER OF BAGALURU GRAMA PANCHAYATH,
8. DHANANJAY .B  
S/O. BHIMANNA  
MAJOR IN AGE  
MEMBER OF BAGALURU GRAMA PANCHAYATH,
9. HEMALATHA  
W/O. ANILKUMAR,  
MAJOR IN AGE,  
MEMBER OF BAGALURU GRAMA PANCHAYATH,
10. ANJANAMMA  
W/O. SALLAPPA,  
MAJOR IN AGE,  
MEMBER OF BAGALURU GRAMA PANCHAYATH,
11. RAFIA SULTHAN  
W/O. DASTHAGIRI SAB,  
MAJOR IN AGE,  
MEMBER OF BAGALURU GRAMA PANCHAYATH,
12. M.D. USMAN GHANNI  
S/O. LATE SULAIMAN SAB,  
MAJOR IN AGE,  
MEMBER OF BAGALURU GRAMA PANCHAYATH,
13. B.C. NAGARAJ  
S/O. LATE CHANNARAYAPPA,  
MAJOR IN AGE,  
MEMBER OF BAGALURU GRAMA PANCHAYATH,
14. PADMAVATHI  
W/O. A. VENKATARAJU,



- MAJOR IN AGE,  
MEMBER OF BAGALURU GRAMA PANCHAYATH,
15. SYED SHABHIR  
S/O. LATE SARDAR AHEMAD,  
MAJOR IN AGE,  
MEMBER OF BAGALURU GRAMA PANCHAYATH,
  16. B.G. NATARAJ  
S/O. GOPALAPPA,  
MAJOR IN AGE,  
MEMBER OF BAGALURU GRAMA PANCHAYATH,
  17. HAMEEDA  
W/O. FAKRUDDIN SAB,  
MAJOR IN AGE,  
MEMBER OF BAGALURU GRAMA PANCHAYATH,
  18. FARZANA  
W/O. MOHAMMED ALI,  
MAJOR IN AGE,  
MEMBER OF BAGALURU GRAMA PANCHAYATH,
  19. KUTEJA  
W/O. NURULLA,  
MAJOR IN AGE,  
MEMBER OF BAGALURU GRAMA PANCHAYATH,
  20. MUNI VAJARAMMA  
W/O. MUNI NARAYANAPPA,  
MAJOR IN AGE,  
MEMBER OF BAGALURU GRAMA PANCHAYATH,
  21. VEENA .M  
W/O. C. SHIVANNA,  
MAJOR IN AGE,  
MEMBER OF BAGALURU GRAMA PANCHAYATH,
  22. LAKSHMAMMA  
W/O. LATE GANGADHAR,  
MAJOR IN AGE,  
MEMBER OF BAGALURU GRAMA PANCHAYATH,
  23. SUDHEENDRA  
S/O. B.K. SAMPATH,  
MAJOR IN AGE,  
MEMBER OF BAGALURU GRAMA PANCHAYATH,



RESPONDENT NOS.4 TO 23 ARE  
C/O. BAGALURU GRAMA PANCHAYATH,  
BAGALUR VILLAGE, JALA HOBLI,  
YELAHANAKA TALUK,  
BENGALURU – 562 149.

... RESPONDENTS

(BY SMT. B.P. RADHA, AGA FOR R-1 TO R-2;  
SRI B.J. SOMAYAJI, ADVOCATE FOR R-3;  
SRI JAYAKUMAR S. PATIL, SENIOR ADVOCATE FOR  
SRI B. THYAGARAJA, ADVOCATE FOR R-4;  
R-5 TO R-23 – SERVICE OF NOTICE D/W)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE NOTICE DATED 04/11/2023 BEARING NO. ZÄÄÉÁªÀuÉ/1.Dgì/12/2023-2024 ISSUED BY 2<sup>ND</sup> RESPONDENT AUTHORITY IS PRODUCED AND MARKED AS ANNEXURE-F.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

### **ORDER**

1. The petitioner is before this Court seeking for the following reliefs:

*"a. Issue a writ in the nature of certiorari by quashing the notice dated 04.11.2023 bearing No. ZÄÄÉÁªÀuÉ/1.Dgì/12/2023-2024 issued by 2<sup>nd</sup> respondent authority is produced and marked as **ANNEXURE-'F'**.*

*b. To pass such other suitable orders as this Hon'ble Court deems fit to be granted in the facts and circumstances of the case, in the interest of justice and equity."*

2. The petitioner was elected as a member of respondent No.3-Bagaluru Grama Panchayath for the period 2020-2025 and declared to be a returning



candidate on 27.12.2021. Election being held for the post of President/Adhyaksha, one Smt.Hameeda was elected to the said post on 18.01.2022, however, for various reasons, she resigned from the said post by submitting a resignation letter dated 01.02.2023 which came to be accepted on 22.02.2023. Fresh elections having been held, the petitioner was elected to the post of Adhyaksha on 07.03.2023.

3. A requisition for no confidence motion having been tendered on 18.10.2023, a meeting is now proposed to be held on 21.11.2023 at 11.00 a.m. for considering the said no confidence motion. It is aggrieved by the same, the petitioner is before this Court seeking the above prayers.
4. Sri. Ashok Harnahalli, learned senior counsel appearing for the petitioner would submit that:



- 4.1. The petitioner, having assumed the office of President of the Grama Panchayath on 07.03.2023 in terms of the second proviso to Section 49 of the Karnataka Gram Swaraj and Panchayath Raj Act, is protected for a period of 15 months from the date of his election, when no such no-confidence motion can be moved.
- 4.2. His submission is that the earlier President was in office from 18.01.2022 to 22.02.2023; the petitioner was elected on 07.03.2023 within a period of 8 months thereafter, a no-confidence motion is moved within the prohibited period of 15 months and as such, respondent No.2 ought not to have issued a notice dated 04.11.2023 fixing the meeting as 21.11.2023.
- 4.3. The petitioner having been elected on 07.03.2023 would indicate that all the members



of the Grama Panchayath had confidence in the petitioner to function as an Adhyaksha. By misinterpreting the second proviso to Section 49, no confidence motion has been moved, which is not sustainable in law.

4.4. In this regard, he refers to the decision of the Co-Ordinate Bench of this Court in the case of **SMT. C. PUSHPA vs. THE STATE OF KARNATAKA, PANCHAYAATH RAJ DEPARTMENT, BY ITS SECRETARY AND OTHERS<sup>1</sup>** and submits that the said decision, though *prima facie* appears to be against the petitioner, was rendered in a different situation where the term of office of the Adhyaksha was for a period of five years and the prohibited period was for a period of 30 months for moving a no-confidence motion and it is in that background, the Co-Ordinate Bench of this

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<sup>1</sup> ILR 2019 KAR 2395



Court came to a conclusion that if the prohibition is held to be considered from each time the election of the Adhyaksha takes place, then during the entire tenure of the panchayath, no motion for no confidence could be moved.

4.5. He submits that above decision will not be applicable to the present case since in the present case, the term is for a period of 30 months and the period of prohibition is for a period of 15 months and the term of office being for a period of five years, it would not amount to prohibition during the entire term of the panchayath. On these grounds, he submits the above petition is requires to be allowed.

5. Sri. Jayakumar S. Patil, learned senior counsel appearing for respondent No.4 would submit that:



5.1. the decision of the Co-Ordinate Bench of this Court in the case of **Smt. C. Pushpa** is equally applicable to the present facts inasmuch as what is to be considered is the period calculated from the first 15 months from the date of election and this would relate to the date of election of the first President/Adhyaksha, though there may be a case where the earlier president resigned and the new president has taken over, it would not give rise to a further protection of 15 months.

5.2. Now the period during which the person can occupy the post of Adhyaksha has been reduced to 30 months, inasmuch after the said 30 months, fresh elections would have to be held for the said post depending on the reservation policy of the State. Thus, the tenure of Adhyaksha being limited for a period of 30 months unless the said Adhyaksha



satisfies the requirement of the second term and gets reelected.

5.3. In the event of the prohibition of 15 months being read as from the date on which even the second president got elected would result in the said prohibition being applicable for the entire term of 30 months, which is what has been considered by the Co-ordinate Bench in **C. Pushpa's** case, which would be applicable to the present case also.

5.4. On these grounds, he submits the above petition is required to be dismissed.

6. Heard Sri. Ashok Harnahalli, learned senior counsel for the petitioner and Sri. Jayakumar S. Patil, learned senior counsel for respondent No.4 and perused the papers.



7. The short question that would arise for consideration in the present matter is:

*"Whether there is any change of circumstance by way of amendment to Section 46 and Section 49 of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993, which would make the decision in **C. Pushpa's** case inapplicable to the present matter?"*

8. Section 46 and Section 49 as they stood prior 2020 are reproduced hereunder for easy reference:

**"46. Term of office and conditions of service of Adhyaksha and Upadhyaksha.**-(1) *The term of office of every Adhyaksha and every Upadhyaksha of the Grama Panchayat shall, save as otherwise provided in this Act, be thirty months from the date of his election or till he ceases to be a member of Grama Panchayat, whichever is earlier:*

*Provided that the term of office of Adhyaksha and Upadhyaksha of the Grama Panchayat who are in office on the date of commencement of the Karnataka Panchayat Raj (Amendment) Ordinance, 2002 shall be thirty-three months from the date of their election and the term of office of Adhyaksha and Upadhyaksha of Grama Panchayat to be elected immediately before the expiry of the said period shall be remaining period of twenty-seven months, provided that in either case in the meantime they do not cease to be members of the Grama Panchayat.*

*(2) Salary and other conditions of service of Adhyaksha and Upadhyaksha shall be as prescribed."*



**49. Motion of no-confidence against Adhyaksha or Upadhyaksha of Grama Panchayat.**– (1) Every Adhyaksha or Upadhyaksha of Grama Panchayat shall forthwith be deemed to have vacated his office if a resolution expressing want of confidence in him is passed by a majority of not less than two-thirds of the total number of members of the Grama Panchayat at a meeting specially convened for the purpose in accordance with the procedure as may be prescribed:

*Provided that no such resolution shall be moved unless notice of the resolution is signed by not less than one-third of the total number of members and at least ten days notice has been given of the intention to move the resolution.*

*Provided further that no resolution expressing want of confidence against an Adhyaksha or Upadhyaksha, shall be moved within one year from the date of his election:*

*Provided also that where a resolution expressing want of confidence in any Adhyaksha or Upadhyaksha has been considered and negatived by a Grama Panchayat a similar resolution in respect of the same Adhyaksha or Upadhyaksha shall not be given notice of, or moved, within one year from the date of the decision of the Grama Panchayat.”*

9. Section 46 and Section 49 post amendment in the year 2020 are reproduced here under:

**"46. Term of office and conditions of service of Adhyaksha and Upadhyaksha.**–(1) The term of office of every Adhyaksha and every Upadhyaksha of the Grama Panchayat shall, save as otherwise provided in this Act, be thirty months from the date of his election or till he ceases to be a member of Grama Panchayat, whichever is earlier:

*Provided that the term of office of Adhyaksha and Upadhyaksha of the Grama Panchayat who are in*



office on the date of commencement of the Karnataka Panchayat Raj (Amendment) Ordinance, 2002 shall be thirty-three months from the date of their election and the term of office of Adhyaksha and Upadhyaksha of Grama Panchayat to be elected immediately before the expiry of the said period shall be remaining period of twenty-seven months, provided that in either case in the meantime they do not cease to be members of the Grama Panchayat.

(2) Salary and other conditions of service of Adhyaksha, Upadhyaksha and Chairman Standing Committee shall be as prescribed.”

x x x

**49. Motion of no-confidence against Adhyaksha or Upadhyaksha of Grama Panchayat.**(1) Every Adhyaksha or Upadhyaksha of Grama Panchayat shall forthwith be deemed to have vacated his office if a resolution expressing want of confidence in him is passed by a majority of not less than two-thirds of the total number of members of the Grama Panchayat at a meeting specially convened for the purpose in accordance with the procedure as may be prescribed:

*Provided that no such resolution shall be moved unless notice of the resolution is signed by not less than one-half of the total number of members and at least ten days notice has been given of the intention to move the resolution.*

*Provided further that no resolution expressing want of confidence against an Adhyaksha or Upadhyaksha, shall be moved within the first fifteen months from the date of his election:*

*Provided also that where a resolution expressing want of confidence in any Adhyaksha or Upadhyaksha has been considered and negatived by a Grama Panchayat a similar resolution in respect of the same Adhyaksha or Upadhyaksha shall not be given notice of, or moved, six months from the date of the decision of the Grama Panchayat.*



*(2) Notwithstanding anything contained in sub-section (1), no resolution expressing want of confidence against an Adhyaksha or Upadhyaksha, shall be moved except on specific allegation of misuse or abuse of power or authority in executing any scheme, action plan or direction of Government or project of the panchayat or of misappropriating funds or other assets of the panchayat during the term of his membership or otherwise indulging in corruption or misconduct in the course of exercising his functions."*

*(emphasis supplied)*

10. Though the term of the Panchayat members has continued to be 5 years, a comparison of both sections would indicate that the five year term for the office of Adhyaksha, has been reduced to 30 months. The prohibition that was applicable prior to 2020 for moving a no-confidence motion has been reduced from 30 months to 15 months. Both of these aspects cannot be looked into in isolation.
11. What this Court would also have to look into is the reason why the term is reduced from five years to 30 months, inasmuch as on account of the reservation provided under Section 43 of the Karnataka Gram Swaraj and Panchayat Raj Act. There would be two



terms for every panchayath and the posts of Adhyaksha and Upadhyaksha would be reserved as per the reservation policy for every term by rotation amongst all the panchayaths.

12. Thus, it is on account of said amendment that further amendments have been carried out in Section 46 and Section 49 restricting the term to a period of 30 months. When this is taken into consideration, the reasoning in **C. Pushpa's** case, which is applicable to the entire term of five years, would, in my considered opinion be equally applicable to the reduced term of 30 months since the reduction in the term and the reduction in the prohibition period is prorata to the term of Adhyaksha in terms of Section 43 of Karnataka Gram Swaraj and Panchayat Raj Act.

13. Thus, I find that there is no change in the circumstances requiring a departure from the reasoning of the Co-ordinate Bench of this Court in



**C. Pushpa's** case which would be equally applicable to the present facts.

14. A president or vice president who assumes office post the resignation, disqualification or death of the first elected president or vice president will occupy the said post for the remainder of the term. The 1<sup>st</sup> term shall be calculated from the date of declaration of election results to a period of 30 months thereafter, the 2<sup>nd</sup> term shall be calculated from the end of the above 30 months till the completion of the term of the panchayat.
15. The president or vice president who assumes office post the resignation, disqualification or death of the first elected president or vice president would not be entitled to a further protection of 15 months from the date on which he/she assumed office but the period of 15 months will be calculated from the date of results of election if for the first term, so far as



second term is concerned the said period will be calculated from the date of expiry of 30 months calculated from the date of declaration of election results.

16. In the present case the petitioner has assumed office from 07.03.2023, the prohibition of 15 months under the second proviso to Section 49 would have to be taken into consideration from 27.12.2021 when elections results were declared, which expired on 26.05.2023, hence there is no prohibition for moving a no-confidence motion since the period of protection of 15 months is over.

17. Hence, I pass the following:

**ORDER**

The writ petition stands ***dismissed***.

**Sd/-  
JUDGE**