

(2005) 11 OHC CK 0001
In the Orissa High Court
Case No : Writ Petition (C) No. 7798 of 2004

Akrura Nial

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 19-11-2005

Acts Referred:

Orissa Grama Panchayat Act, 1964 — Section 24, 24(2)

Citation : (2006) 101 CLT 245

Hon'ble Judges : P.K. Tripathy, J;A.K. Parichha, J

Bench : Division Bench

Advocate : Santanu Ku. Sarangi and Associates, for the Appellant; S.D. Das and Associates for O.P. Nos. 4 to 15 and A.K. Mishra, Stg. Counsel for O.P. Nos. 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

A.K. Parichha, J.—Petitioner was elected to the office of Sarpanch of Tikirapada Gram Panchayat in the month of February, 2002 and assumed the office of Sarpanch of the said Gram Panchayat. While the matter stood thus, 12 out of 14 Ward Members of the said Panchayat sent a requisition to the Sub-Collector, Nuapada to convene a meeting for carrying out a no confidence motion against the petitioner. Basing on the requisition and the proposed resolution, the Sub-Collector issued the impugned notice to the Ward Members and the petitioner-Sarpanch fixing the date of the meeting to 3.8.2004. Petitioner has challenged the legality of the said notice dated 16.7.2004, Annexure-2 in the present writ application, mainly, on the ground that the provision laid down u/s 24 of the Orissa Gram Panchayat Act, in short, "the Act", is ultra vires the Constitution and that the statutory provision as laid down in Section 24(2)(c) of the Act was not complied with.

2. Mr. S. K. Sarangi, Learned Counsel for the petitioner submitted that petitioner does not press the issue of constitutional validity of the Section 24 of the Act as this Court has already decided in the case of Bhagabat Sahu v. Collector, Angul

and Ors. (2005) (2) CJD 39 that Section 24 of the Act does not ultra vires the Constitution, He, however, submitted that the impugned notice is illegal and invalid for non-compliance of the provisions of Section 24(2)(c) of the Act. According to him notice was issued on 19.7.2004 and was received by the petitioner on 20.7.2004 and so, 15 days clear time before holding the meeting of no confidence motion was not available. In support of such submission, Mr. Sarangi relies on the postal cover of the said notice.

3. Mr. A.K. Mishra, Learned Standing Counsel for opposite parties 1 to 3 and Mr. S.D. Das, Learned Counsel appearing for opposite parties 4 to 15, on the other hand, submitted that the impugned notice having been signed by the Sub-Collector, Nuapada, on 15.7.2004 and issued from his office on 16.7.2004 to the post office and the post office having despatched those notices on 17.7.2004, there was clear 15 days gap between the issue of the notice and the date of no confidence meeting. In support of their plea, the opposite parties 1 to 3 filed affidavit of the Sub-Collector, Nuapada, the receipts of the Under Certificate Posting granted by the Nuapada Post Office, Annexure-E/3 and the certificate granted by the Post Master of the said post office, Annexure-F/3.

4. From the contentions of the respective parties, it appears that the only point of controversy is whether 15 days clear notice was given before holding of the meeting of the vote of no confidence against the petitioner.

5. In the cases of *Sarat Chandra Padhi v. State of Orissa* and Ors. 1988 (I) OLR 76, and *Smt. Heeramani Munda Vs. The Collector and Others*, , this Court, while interpreting the provisions of Section 24(2)(c) of the Act, have observed in clear terms that the date of signing of the notice by the Sub-Collector and the date of receipt of the notice by the members concerned are irrelevant and that the date of issue of the notice and the date of meeting are only relevant in computing the period of 15 days. In the said cases it was also clarified that in computing 15 days" period, the date of issue of notice and the date of the meeting are to be excluded. Keeping the aforesaid ratio in mind, it is to be seen whether there was 15 days clear notice in the present case.

6. According to Learned Counsel for the petitioner, notices were despatched from the post office on 19th July, 2004 and was received by the members on 20th July, 2005. Learned Counsel for opposite parties, on the other hand, claimed that notices were despatched from Nuapada Post Office on 17.7.2004 and the meeting was held on 3.8.2004 and there was clear 15 days time available in between. The Sub-collector, Nuapada has filed an affidavit stating that after verifying about the genuineness of the requisitions for the no confidence motion and the signatures on the requisition through the. District Panchayat Officer, he signed the notices on 15.7.2004 and those notices were despatched from his office to the post office on 16.7.2004. The Under Certificate of Posting under Annexure-E/3 bears the postal seal dated 17.7.2004 of NuapadaTanwat Post Office and the endorsement of the Post Master is also there that 15 Nos. of letters were despatched at 12.25 P.M. on 17.7.2004. Replying to the query of the

Collector and District Magistrate, Nuapada, the Post Master of the said Post Office has also sent a letter of reply, Annexure-F/3, indicating that the letters containing those notices were despatched from the Post office on 17.7.2004. Relying on the postal cover, the petitioner has claimed that the notices were despatched on dated 19.7.2004 and that the Under Certificate of Posting receipt and the letter of the Post Master are manipulated documents. The postal cover bears two postal seals one of Nuapada Tanwat Post Office and the other of the destination Post Office. The seal of the destination Post Office shows date 19.7.2004, but the date on the seal of the Nuapada Tanwat Post Office is not visible. From these materials, one can just presume that the letter which was despatched from Nuapada Tanwat Post Office on 17.7.2004 was received by the destination Post Office on 19.7.2004. As has been indicated above, the date of receipt of the notice is of no consequence. There should be clear gap of 15 days between the date of issue and the date of the meeting. In this case there are affidavit and endorsements of public officers to show that the letters were issued from Nuapada Post Office on 17.7.2004 and the meeting was held on 3.8.2004. Even if the dates 17.7.2004 and 3.8.2004 are excluded still clear 15 days gap is available. Therefore, the provisions of Section 24(2)(c) of the Act was never violated in the present case.

7. Mr. S. D. Das, Learned Senior Counsel appearing for opposite parties 4 to 15 submitted that the petitioner participated in the meeting on 3.8.2004 and so, he is estopped from challenging the validity of the said meeting on the plea that 15 days, clear notice was not there. In support of this submission, he relied on the case of Bhagabat Sahu (Supra). In the said case, the petitioner participated in the meeting without raising any objection about lack of 15 clear days notice and so, this Court held that the petitioner cannot take the plea of violation of the provisions of Section 24(2)(c) of the Act. The said ratio is not applicable in the case at hand, as in the present case, the petitioner filed the Writ Application soon after receipt of the notice and before the date of the meeting.

8. Be that as it may, the materials on record clearly establish that there was 15 clear days gap between the date of issue of notice and the date of the meeting and that the provision of Section 24(2)(c) of the Act was not violated. In that situation, the impugned notice dated 16.7.2004, Annexure-2 issued by the Sub-Collector, Nuapada is found to be legal and does not call for any interference. The Writ Application is thus found to be devoid of merit and is dismissed.

9. In view of dismissal of the Writ Application, the interim order dated 2.8.2004 passed in Misc. Case No. 7781 of 2004 stands vacated.

P. K. Tripathy, J.

10. I agree.