

(2020) 08 OHC CK 0016

In the Orissa High Court

Case No : Writ Appeal No. 487 Of 2020 (Arising Out Of W.P.(C) No. 27972 Of 2019 Disposed Of On 06.05.2020)

Amrita Sahu

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 31-08-2020

Acts Referred:

Odisha Panchayat Samiti Act, 1959 — Section 16(1)(d), 16(3), 46B, 46B(1), 46B(2), 46B(2)(a), 46B(2)(g)
Maharashtra Village Panchayats Act, 1959 — Section 35, 35(1), 35(3)
Maharashtra Gram Panchayat Rules, 1958 — Rule 35(3B)

Citation : (2020) 08 OHC CK 0016

Hon'ble Judges : Mohammad Rafiq, CJ; B.R. Sarangi, J

Bench : Division Bench

Advocate : A.K. Behera, J.P. Pattnayak, S.R. Pati, S.K. Nanda

Final Decision : Dismissed

Judgement

Mohammad Rafiq, CJ

1. This appeal seeks to challenge the judgment dated 06.05.2020 passed by the learned Single Judge in W.P.(C) No. 27972 of 2019, by which the writ petition filed by the appellant (petitioner in the writ petition) has been dismissed.

2. The factual backdrop giving rise to this appeal in brief is that the appellant-writ petitioner is the elected Chairperson of Karlamunda Panchayat Samiti in the district of Kalahandi. The appellant received the notice dated 21.12.2019 issued by the respondent No.3-Sub-Collector, Bhawanipatna, Kalahandi for convening a Special Meeting of the said Panchayat Samiti at 11.00 A.M. on 31.12.2019 to take up 'No Confidence Motion' against her (the appellant) for discussion on the basis of requisition dated 20.12.2019 under the signature of 15 members of the said Panchayat Samiti having right to vote. Karlamunda Panchayat Samiti consists of 26 members, including the present appellant, the Member of Parliament and the Member of Legislative Assembly of the area concerned.

3. The case of the appellant is that on 17.12.2019 a meeting of the Panchayat Samiti was convened by 15 members, who passed a resolution for initiation of No Confidence Motion against the appellant. After the resolution being passed, a requisition dated 20.12.2019 signed by 15 members of the Panchayat Samiti was submitted to the respondent No.3-Sub-Collector, Bhawanipatna, who issued the Notice dated 21.12.2019. It is this notice which the appellant assailed in the writ petition before this Court. Challenge to the said impugned notice was founded on the premise that the same was issued in gross violation of the provision of sub-section (1) of Section 46-B of the Odisha Panchayat Samiti Act, 1959 (hereinafter in short referred to as 'the Act'), mainly for two reasons, namely (i) that prior to issuance of such notice the Sub-Collector ought to have verified the genuineness or otherwise of the signatures appended on the requisition and the proposed resolution; and (ii) that the proposed resolution was not signed by the required number of members of the Panchayat Samiti having the right to vote. Learned Single Judge, while issuing notice of the Writ Petition on 24.12.2019, passed an interim order, directing that the Special Meeting of No Confidence Motion pursuant to the impugned notice may be held on 31.12.2019, but result thereof shall not be declared till the next date, which interim order continued till disposal of the writ petition.

4. The stand of the opposite parties before the learned Single Judge was that in fact 15 members, out of 26 members of the Panchayat Samiti having right to vote, passed the resolution and send the requisition under their signatures. This was in conformity with the provisions of Section 46-B(2)(a) of the Act, which provides that at least one-third members having right to vote should sign the resolution and move the requisition for convening the meeting to vote 'No Confidence Motion'. Further, the opposite party No.3-Sub-Collector, Bhawanipatna, after making due verification of the signatures of the requisitionist members having right to vote, arrived at the satisfaction that the signatures of the requisitionist members are genuine. He also ascertained the personal presence of those members in the meeting. Thus the impugned notice to all the members of the Panchayat Samiti was issued fixing 31.12.2019 as the date of convening the special meeting only after compliance of procedures enumerated under

5. Learned Single Judge, after hearing rival submissions, came to the conclusion that law does not mandate that the requisition must be signed by two-third members of the Samiti having right to vote, and when 15 out of 26 members have signed the requisition, the notice fixing the date to convene special meeting for the purpose was in accordance with the provisions of law. No such complaint has come from any of the members having the right to vote that he was not served with notice to attend the meeting or that he has not received the copy of the requisition or the proposed resolution. Learned Single Judge has in the judgment also taken note of the fact that pursuant to the impugned notice, the special meeting of the Panchayat Samiti held on 31.12.2019 wherein 23 members of the Panchayat Samiti, including the appellant-petitioner, have casted

their votes by secret ballot and the Presiding Officer i.e. Block Development Officer, M. Rampur Block, who was authorized by the opposite party No.3, has recorded the proceedings of the said meeting. Learned Single Judge, upon analyzing the provisions of law and facts of the case, dismissed the writ petition by judgment dated 06.05.2020 and directed the opposite parties to declare the result of the vote of No Confidence Motion against the petitioner. Hence the appeal.

6. We have heard Mr. A.K. Behera, learned counsel for the appellant, Mr. Santosh Kumar Nanda, learned counsel appearing for respondent Nos. 8 to 22, except respondent No.14, Mr. S.R. Pati, learned counsel for respondent Nos. 5,6 & 14-caveator and Mr. J.P. Pattnayak, learned Addl. Government Advocate for the State-respondent Nos. 1 to 4.

7. Mr. A.K. Behera, learned counsel for the appellant submitted that when the meeting of the Panchayat Samiti was held on 17.12.2019, only 15 members were present and the requisition was signed by only 14 members, out of total 26 members having right to vote. The number of signatories being less than two-third, as required by Section 46-B(1) of the Act, the resolution itself was not valid. Even then, the respondent no.3-Sub-Collector, Bhawanipatna issued notice dated 21.12.2019 to convene the meeting for discussing the No Confidence Motion as per the resolution dated 17.12.2019 and requisition dated 20.12.2019. It is argued that the learned Single Judge has in the impugned judgment lost sight of Section 46-B(2)(g) of the Act which provides that if the number of members present at the meeting is less than a majority of two-thirds of members having a right to vote, the resolution shall stand annulled.

8. On the other hand Mr. J.P. Patnaik, learned Addl. Government Advocate appearing on behalf of State-respondent Nos. 1 to 4, supporting the impugned judgment, contended that Sections 46-B(2)(a) of the Act categorically provides that the meeting of No Confidence Motion under Section 46-B(1) shall be convened on the requisition signed by at least one-third members having right to vote, along with a copy of the resolution proposed to be moved at the meeting. Since the total number of members having right to vote in the said Panchayat Samiti are 26, number of 15 members, who had submitted requisition, is more than one-third of the total members. The opposite party No.3 upon receipt of such requisition was perfectly justified in issuing the notice dated 21.12.2019 for convening the meeting. When the special meeting was held on 31.12.2019, 23 out of 26 members, including the present appellant, attended the meeting and casted their vote by secret ballots. Hence, the learned Single Judge has rightly interpreted the provisions of law and passed the impugned judgment, which does not call for any interference.

9. Mr. S.K. Nanda, learned counsel appearing on behalf of respondent Nos. 8 to 22, except respondent No.14, submitted that Karlamunda Panchayat Samiti consists of 12 Gram Panchayats having 12 Sarpanchs and 12 Panchayat Samiti Members, from amongst whom the appellant was elected as Chairperson of the

Panchayat Samiti as per Section 16(3) of the Act. Apart from 24 members constituting Panchayat Samiti, the Member of Parliament and the Member of Legislative Assembly of the said area were also ex-officio members of the Panchayat Samiti. Thus the Panchayat Samiti was constituted by 26 members having a right to vote in accordance with provisions contained in Section 16(1) (d) of the Act. It is submitted by Mr. S.K.Nanda, learned counsel that 15 members, who were having right to vote, submitted under their signatures the resolution dated 17.12.2019 as well as the requisition dated 20.12.2019, before the Sub-Collector, to convene the special meeting for No Confidence Motion against the Chairperson of the Panchayat Samiti-appellant herein as per Section 46-B(2)(a) of the Act. The appellant is not correct in interpreting Section 46-B(2) (g) of the Act, which applies to the resolution to be passed in the Specially convened meeting for No Confidence Motion and not to the resolution for sending the requisition. It is submitted that the appellant has preferred this writ appeal only to frustrate the mandate of the Act and to linger the process as contemplated under the law, apprehending the outcome of the specially convened meeting dated 31.12.2019 in which 23 members, including the appellant herself, have casted their vote. Learned Single Judge was perfectly justified in holding that the number of requisitionist members required to sign the resolution for sending the requisition for no confidence motion is one-third of the members having right to vote, as provided under Section 46-B(2)(a) of the Act and not two-third, as argued by the learned counsel for the appellant. Mr. S.K. Nanda, learned counsel has in support of his argument placed reliance on the judgment of this Court in the case of Smt. Kanti Kumbhar Vs. State of Orissa, 2001(II) OLR 44.

10. Mr. S.R. Pati, learned counsel appearing on behalf of respondent Nos. 5,6 & 14, while adopting the arguments advanced by learned counsel Mr. S.K. Nanda and learned Addl. Government Advocate, submitted that there is no illegality and infirmity in the judgment dated 06.05.2020 passed by the learned Single Judge. Section 46-B(1) read with Section 46-B(2)(g) with regard to two-third majority of members having right to vote, will apply for the Special meeting convened on 31.12.2019 and not for the meeting dated 17.12.2019. He has also placed reliance upon judgments of this Court in Manikya Suna Vs. State of Odisha & Ors., 2016 (Supp.2)OLR 556; and Smt. Kanti Kumbhar (supra), and submitted that since the Notice dated 21.12.2019 issued by the respondent No.3 was perfectly legal, the learned Single Judge has rightly dismissed the writ petition on proper interpretation of Section 46-B of the Act. Hence the present writ appeal is liable to be rejected.

11. In order to meaningfully appreciate the rival contentions, it is deemed appropriate to re-produce the provisions of Section 46-B(1) & (2) of the Act, which read as under:

"46-B. Vote of no confidence against Chairman and Vice-Chairman of Samiti -

(1) Where at a meeting of the Samiti specially convened in that behalf a

resolution is passed, supported by a majority of not less than two-thirds of the total number of members having a right to vote, recording want of confidence in the Chairman or Vice-Chairman of such Samiti the resolution shall forthwith be published by such authority and in such manner as may be prescribed and with effect from the date of such publication the Chairman or Vice-Chairman, as the case may be, shall be deemed to have vacated office.

(2) In convening a meeting under Sub-section (1) and in the conduct of business at such meeting the procedure herein specified shall be followed, namely :

(a) no such meeting shall be convened except on a requisition signed by at least one-third of the members with a right to vote, along with a copy of the resolution proposed to be moved at the meeting;

(b) the requisition shall be address to the Sub-divisional Officer;

(c) the Sub-divisional Officer on receipt of such requisition shall fix the date, hour and place of such meetings and give notice of the same to all the members with a right to vote, along with a copy of the requisition and of the proposed resolution, at least seven clear days before the date so fixed;

(d) the Sub-divisional Officer or when he is unable to attend any other Gazetted officer not below the rank of a Class-II Officer of the State Civil Service, authorized by him, shall preside over and conduct the proceedings of the meeting;]

(e) the voting at all such meetings shall be by secret ballot;

(f) no such meeting shall stand adjourned to a subsequent date and no item of business other than the resolution for recording want of confidence in the Chairman or the ViceChairman shall be taken up for consideration at the meeting;

(f-1) no such resolution shall be taken up for consideration unless it has been proposed by one member and has been seconded by another member at the meeting;

(f-2) after the resolution is taken up for consideration, the member proposing the resolution may open the discussion thereon and other members may speak on the resolution in the order in which they are called upon by the Presiding Officer;

Provided that no member shall, unless so permitted by the Presiding Officer, have the right to speak more then once and if any member who is called upon does not speak he shall not be entitled, except by the permission of the Presiding Officer, to speak at a later stage of the discussion;

(f-3) where the Chairman or as the case may be, the Vice-Chairman, against whom the resolution has been tabled, is present, he shall be given an opportunity to speak by way of reply to the resolution and the discussion made at the meeting;

(f-4) the Presiding Officer may fix the time within which each member, including

the Chairman and Vice-Chairman, shall conclude his speech;

(g) if the number of members present at the meeting is less than [a majority of two-thirds] of members having a right to vote the resolution shall stand annulled ; and

(h) if the resolution is passed at the meeting supported by a majority of two-thirds of members having a right to vote, the Sub-Divisional Officer shall forward the resolution to the authority prescribed in pursuance of Sub-section (1).

12. In so far as the initiation of the process for convening the meeting to discuss the 'No Confidence Motion' against the Chairman or Vice-Chairman under Sub-section (1) of Section 46-B is concerned, Sub-section 2(a) of Section 46-B clearly stipulates that "no such meeting shall be convened except on a requisition signed by at least one-third of the members with a right to vote, along with a copy of the resolution proposed to be moved at the meeting. The argument of the appellant that the meeting of the Panchayat Samiti Members held on 17.12.2019 was attended by 15 members and only 14 of them, out of 26 members having right to vote, signed the resolution, which is not "a majority of not less than two-thirds of the total number of members" as per Section 46-B (1) of the Act, cannot be countenanced for the simple reason that the meeting dated 17.12.2019 held by 15 members was merely for submission of a requisition along with the resolution to the Sub-Collector giving a proposal to convene the meeting for No Confidence Motion against the appellant. Purpose of this meeting was to initiate the process for convening the meeting on vote of no confidence motion as envisaged under Section 46-B(1) of the Act. At that stage, the resolution was required to be supported and signed by only one-third of the members having right to vote as provided under Section 46-B (2)(a) of the Act. Even otherwise, that would be an insignificant factor because the impugned notice dated 21.12.2019 was issued by the Sub-Collector, on the basis of a separate requisition dated 20.12.2019 duly signed by 15 members having right to vote, after due verification of the signatures of the requisitionist-members, and served on all the members for convening the special meeting on 31.12.2019, to discuss the No Confidence Motion against the appellant. The said special meeting dated 31.12.2019 was attended by 23 members of the Panchayat Samiti including the appellant, all of whom casted their votes by secret ballot.

13. This Court after analyzing the provisions of Section 46-B of the Act, in Smt. Kanti Kumbhar (supra), has categorically held that no formal meeting is necessary for submitting a requisition for holding a specially convened meeting for discussing the no confidence motion. Even if such meeting is held, it has no statutory backing. Following observations of the court are worth quoting:-

"5.

XXXX

XXX

XXXX

A perusal of the aforesaid provisions makes it clear that a requisition for convening a meeting to consider the no-confidence motion should be signed by at least one-third of the members of the Panchayat Samiti having a right to vote and along with the requisition a copy of the resolution proposed to be moved at the meeting should be there and the requisition should be addressed to the Sub-divisional Officer. On receipt of such requisition along with copy of the resolution proposed to be moved at the meeting, the Sub-divisional Officer is to fix the date, hour and place of such meeting and give notice of the same to all the members who have a right to vote along with a copy of the requisition and of the proposed resolution at least seven clear days before the date fixed for holding such meeting.

6. The petitioner in this case has asserted that the requisition along with the proposed resolution was adopted at a meeting on 3.9.2000 without observing the due procedure laid down Under Section 46-B of the Act. This contention is without any substance. For submitting a requisition for holding a specially convened meeting for discussing about no-confidence motion, no formal meeting of the Panchayat Samiti is necessary. Section 46-B (2) (a) only requires that a special meeting for discussing about the no-confidence motion can be convened only on the basis of a requisition signed by at least one-third of the members with a right to vote and along with such requisition, a copy of the resolution proposed to be moved at such meeting is required to be sent. There is no requirement in the Act that before sending such a requisition, there has to be a formal meeting of the Panchayat Samiti. It is, of course, true that in the present case, the proposed resolution relating to no-confidence was also purported to have been adopted in a meeting held on 3.9.2000. Such a meeting of some of the members of the Panchayat Samiti does not have any statutory force and is not required to be held in a particular manner. It can be considered to be a convenient method for preparing requisition along with proposed resolution (the no-confidence motion). Therefore, even assuming that such a meeting had been held without following any procedure contemplated Under Section 46-B, the requisition on the basis of so-called resolution adopted in such meeting does not become illegal and on the basis of such requisition the meeting contemplated Under Section 46-B (1) could be legally convened by the prescribed authority if other conditions are fulfilled. In this context, it is also contended that no reason had been given in the proposed resolution for moving the no-confidence motion against the Chairperson. The provisions contained in Section 46-B of the Act do not require any particular reason to be given for sending a requisition for the purpose of considering a no-confidence motion. It is also not necessary that in the proposed resolution, the reasons for moving the no-confidence motion against the Chairman or the Vice-Chairman, as the case may be, should be indicated."

14. A Division Bench of this Court, in Jagdish Pradhan and others Vrs. Kapileswar Pradhan & others, 64 (1987) C.L.T. 359, while considering a similar question under Section 46-B(2) of the Act where the requisition for No Confidence Motion

was not accompanied by the proposed resolution in a separate sheet, held that there is no form prescribed for such a resolution and the intention behind the resolution was well understood by the Sub-Divisional Officer. This Court, in paragraph-7 of the judgment, held as under :-

"7. The revisional authority has held that the mandatory provision that no meeting shall be convened except on a requisition along with a copy of the resolution proposed to be moved, has not been complied with as a copy of the resolution proposed to be moved at the meeting in which a vote of no confidence has to be passed was not appended. True it is that Section 46-B (2) requires a copy of the resolution proposed to be moved at the meeting to be along with the requisition. In the resolution dated 24-3-1985 the proposal was clearly mentioned to be the absence of confidence of the signatories on the Chairman. Merely because the proposal is not in a separate document, it cannot be said that the action thereupon becomes illegal. There is no form prescribed for such a proposed resolution. The authority, i.e. the Sub-divisional Officer well understood the intention behind the resolution and rightly treated the same to be in compliance of the requirement of Section 46-B (2). The finding of the revisional authority that the mandatory provision has not been complied is thus an error of law apparent on the face of the record."

15. This Court in the case of Prahallad Dalei Vs. State of Odisha & Ors., (W.P.(C) No. 17873 of 2014 decided on 09.10.2015), while dealing with an identical petition, in relation to No Confidence Motion against a Sarpanch, under the Orissa Gram Panchayat Act, observed that if the intention of the requisite number of members is clear from the resolution adopted in the meeting held to consider the requisition and the proposed resolution, then the said intention is to be accepted as indicative of the fact that requisite number of members want to move a No Confidence Motion and that resolution adopted in such meeting is to be abstractly accepted as the proposed resolution. This Court, made the following observations at paragraphs 10 and 11 of the judgment:

"10. From the discussions supra, it is clear that -

(i) no form or proforma has been prescribed either for the Notice to be issued by the Sub-Collector calling upon the members including the Sarpanch or Naib-Sarpanch to attend the meeting of No Confidence, or for the requisition to be sent by 1/3rd members of the Grama Panchayat or for the proposed resolution to be moved.

(ii) If the intention of the requisite number of members is clear from the resolution adopted in the meeting held to prepare the requisition and the proposed resolution, then the said intention is to be accepted as indicatives of the fact that requisite number of members want to move a No Confidence Motion and that resolution adopted in such meeting is to be abstractly accepted as the proposed resolution.

(iii) The so called proposed resolution to be moved need not be on a separate

sheet or document.

11. In the present case it is found from Annexure-3 that it starts with the heading "PRASTABITA SANKALPA (Proposed Resolution) NIMANTE SWATANTRA ADHIBESAN" - meaning, Special Meeting for Proposed Resolution. The meeting, vide Annexure-3 was held on 29.08.2014 under the Chairmanship of one Satya Ranjan Samantaray. Said meeting was held in the temple of Maa Ram Chandi Thakurani and 10 Ward Members had attended the meeting. The resolution further says that "BOLGADA GRAM PANCHAYATARA SARPANCH SRI PRAHALLAD DALAINKA BIRUDDHARE AAGATA HEBAKU THIBA ANASTHA PRASTABA NIMNAMATE PRASTABITA SANKALPA GRAHANA KARAGALA" - which means, "Following Proposed Resolutions adopted for the meeting of No Confidence to be convened against Sri Prahallad Dalai, Sarpanch of Bolgada Grama Panchayat." Resolution No.(1) of the meeting describes about some of the misdeeds and misdemeanour of the petitioner and it is further stated in Resolution No.(1) that, as the members have lost confidence over the petitioner, they intend to convene a meeting of No Confidence against him. If Annexure-3 is tested on the touchstone of the settled law discussed supra, there is no escape from the conclusion that Annexure-3 is the proposed resolution or the relevant resolution as contemplated in Section 24 (2)(a) of the Act, and, understanding the intention of the signatory Ward Members in Annexure-3, the Sub-Collector has acted on the requisition vide Annexure-2. I, therefore, do not find any illegality in the meeting convened on the basis of Annexures 2 and 3."

16. Adverting now to the contention of the learned counsel for the appellant that the learned Single Judge did not examine the provision of Section 46-B(2)(g) of the Act, even this argument is also liable to be repelled for the reason to be stated presently. The learned Single Judge has analyzed the provisions under Section 46-B of the Act and clearly held that law does not mandate that the requisition and proposed resolution must be signed by at least two-third members having right to vote. It was held that decision to convene the special meeting for recording want of confidence in the Chairman of the Panchayat Samiti, could be taken upon receipt of a requisition addressed to the Sub-Collector signed by at least one-third of the total members of the Samiti with a right to vote. The appellant has now for the first time raised the argument with regard to violation of Section 46-B (2)(g) of the Act in the present Writ Appeal before the Division Bench. In fact, the legislative intent in having Section 46-B(2) (g) as an independent provision in the Act is to provide the quorum requisite for convening the meeting of the Panchayat Samiti to take up for discussion, the proposed resolution envisaged under Section 46-B(2)(a), for recording want of confidence in the Chairman or the Vice-Chairman of the Samiti "by a majority of not less than two-thirds of the total number of members having a right to vote". Section 46-B of the Act in so far as the decision about the motion of confidence/no confidence is concerned, contains a complete scheme. While Section 46-B(2) (a) of the Act requires that the requisition for convening the special meeting for vote of motion of no confidence to be signed by its one-third members, who have

right to vote, Section 46-B(1) of the Act requires the motion of no confidence to be carried out by a majority of not less than two-thirds of the total number of members having a right to vote. Section 46-B(2)(g) of the Act in this context ordains that if the number of members attending the meeting to vote of the no confidence motion "is less than a majority of two-thirds of members having a right to vote, the resolution shall stand annulled". All these three provisions are intended to apply to different situations.

17. It is significant to note that unlike many other enactments which provide for passing of the no confidence motion by a majority or two third of those present and voting, the legislature has in Section 46-B(1) deliberately insisted for a majority of two third of the total number of members "having right to vote" for passing the no confidence motion. We may in this connection, usefully refer to recent judgment in *Ganesh Sukhdeo Gurule v. Tahsildar, Sinnar and others*, reported in (2019) 3 SCC 211, in which the Supreme Court was dealing with a case where respondents moved a no confidence motion against the appellant-Sarpanch. The Tahsildar issued notice dated 07.09.2018 for convening special meeting of Gram Panchayat to consider the no confidence motion on 14.09.2018. On that date, out of nine members of the Gram Panchayats only eight members were present in the meeting. Six members voted in favour of the motion and two members opposed to it. One of the members, who voted in favour of no confidence motion was not qualified to vote. A dispute application under Rule 35(3-B) of the Maharashtra Gram Panchayat Rules, 1958 challenging the no-confidence motion passed was filed. The Addl. Collector, Nasik passed an order approving the resolution of the special meeting, holding that no confidence motion was validly passed. Against this order, a writ petition was filed by the appellant which was dismissed by the High Court and thereafter the matter was taken to the Supreme Court. Section 35 of the Maharashtra Village Panchayats Act, which deals with "motion of no confidence", provided that "A motion of no confidence may be moved by not less than one-third of the total number of the members who are for the time being entitled to sit and vote at any meeting of the Panchayat against the Sarpanch or the Upa-Sarpanch after giving such notice thereof to the Tahsildar as may be prescribed." Section 35 (3) provided that "if the motion is carried by a majority of not less than two-third of the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat or the Upa-Sarpanch, as the case may be, shall forthwith stop exercising all the powers and perform all the functions and duties of the office....".

18. As the facts of the case show, what shall be two-third majority for holding the no confidence motion to be passed in the Panchayat was the question that arose before the Supreme Court in *Ganesh Sukhdeo Gurule* (supra). Admittedly, there were nine members in the village panchayat. Out of nine members in the meeting held on 14.09.2018, eight members were present. Out of eight members present, one member was disqualified to sit and vote by virtue of she having not submitted her caste certificate after the election. She was one of

those six members who voted in favour of no confidence motion. There were thus five valid votes in favour of no confidence motion as two against it. The statute provided for special majority for passing a motion. The argument of the respondent was that "the two-third majority has to be computed out of the members present and voting i.e. seven excluding one member who was unqualified to vote and five is more than two third of seven, the majority has been rightly passed." Repelling that argument, the Supreme Court held that "the interpretation put by the learned counsel for the respondent cannot be accepted in view of the clear language of statute. The crucial words in the statute are members "who are for the time being entitled to sit and vote". This expression cannot be treated to be expression "members present and voting". The submission of the respondent that for computation of majority, number of seven members should be treated, cannot be accepted". The Supreme Court further held that "provision of Section 35(1) which provides for requirement for moving motion of no-confidence by not less than one-third of the total number of the members who are for the time being entitled to sit and vote at any meeting of the Panchayat, is the same expressing as used in sub-Section (3). Obviously, requirement of not less than one-third number for moving motion has to be computed from total number of the members who are entitled to sit and vote. Thus, the same expression having been used in sub-Section (3) of Section 35, both the expressions have to be given the same meaning. Thus, one-third of total number of members who are entitled to sit and vote have to be determined on the strength of members entitled to vote at a particular time. The same meaning has also to be applied while computing two-third majority."

The ratio of the aforesaid judgment of the Supreme Court in Ganesh Sukhdeo Gurule (supra) would squarely apply to the facts of the present case while interpreting Sections 46-B(1) and 46-B(2)(g) of the Act, in both of which similar expression about a majority of two thirds of the total members having right to vote, has been used by the legislature. In a way these two provisions complement each other. If number of the members attending the meeting convened under Section 46-B(1) of the Act falls short of two third of the total members, the convening of the meeting would be an exercise in futility and passing of the no confidence motion in that case would be an impossibility. It is therefore that the legislature has purposefully provided in Section 46-B(2)(g) of the Act that "if the number of members present at the meeting is less than a majority of two-thirds of members having a right to vote the resolution shall stand annulled."

19. It is trite that the Courts while interpreting a particular provision of law have to construe it in the way the legislature intended it, so as to make the provision workable. We may on this proposition of law refer to the Constitution Bench decision of the Supreme Court in the case of Tinsukhia Electric Supply Co. Ltd. v. State of Assam & others, reported in AIR 1990 SC 123. The Supreme Court in that case held that the Courts strongly lean against any construction which tends to reduce a Statute to a futility. The provision of a Statute must be so construed

as to make it effective and operative, on the principle "ut res majis valeat quam periat". Their Lordships held that a Court in dealing with the language of a Statute, has to ascertain from, and accord to, the Statute the meaning and purpose which the legislature intended for it. It is the Court's duty to make what it can of the Statute, knowing that the statutes are meant to be operative and not inept and that nothing short of impossibility should allow a Court to declare a Statute unworkable. The Supreme Court in that case placed reliance upon judgment of the King's Bench in *Whitney v. Inland Revenue Commissioner*, [1926] AC 37, wherein Lord Dunedin said: "A Statute is designed to be workable, and the interpretation thereof by a Court should be to secure that object, unless crucial omission or clear direction makes that end unattainable." (vide page 52)

20. Reference may also be made to judgment of the Supreme Court in *Reserve Bank of India vs. Peerless General Finance and Investment Co. Ltd. and others*, (1987) 1 SCC 424, wherein it was held that interpretation of the Statute must depend on the text and the context. A statute is best interpreted when we know why it was enacted. The statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. The following observations of their Lordships of the Supreme Court in the said judgment are apt to quote:-

"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression 'Prize Chit' in *Srinivasa Enterprise v. Union of India*, reported in (1980) 4 SCC 507 and we find no reason to depart from the Court's construction."

21. The Supreme Court in *His Holiness Kesavananda Bharati Sripadagalvaru and*

others v. State of Kerala and another, reported in AIR 1973 SC 1461 held that "while interpreting words in a solemn document like the Constitution, one must look at them not in a school-masterly fashion, not with the cold eye of a lexicographer, but with the realization that they occur in 'a single complex instrument in which one part may throw light on the others' so that the construction must hold a balance between all its parts". While following the aforesaid dictum of Kesavananda Bharati, the Supreme Court in a later judgment in Chief Justice of Andhra Pradesh and another vs. L.V.A. Dikshitulu & others, reported in AIR 1979 SC 193, held that "the primary principle of interpretation is that a constitutional or statutory provision should be construed "according to the intent of they that made it"(Coke). Normally, such intent is gathered from the language of the provision. If the language or the phraseology employed by the legislation is precise and plain and thus by itself, proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow."

22. It is thus well settled that for the purpose of interpretation of statute, the same has to be read in its entirety. The primary principle of interpretation is that a constitutional or statutory provision should be construed according to the intent of legislature and such intent is gathered from the language of the provision itself. The intent of the legislature in engrafting the aforesaid provision of the statute in Section 46-B of the Act is very clear. While interpreting the same, it has to be read in entirety. Sections 46-B(1), 46-B(2)(a) & 46-B(2)(g) of the Act cannot be read in isolation, rather all sub-sections of Section 46-B of the Act have to be read together so as to make the scheme of the legislation workable. Thus read, it would appear that though Section 46-B(2)(g) of the Act operates in a different sphere altogether, but it has got a direct co-relation with Section 46-B(1) which also similarly mandates that the motion for no confidence can be passed only by "a majority of not less than two thirds of the total number of members having a right to vote." It is therefore that a majority of two-thirds of the total members having right to vote has been provided as a necessary condition for holding the meeting by the Sub-Collector or Presiding Officer, authorized on his behalf, to vote on the No Confidence Motion, on the basis of the requisition moved. In other words, the meeting to consider the No Confidence Motion against the Chairman or Vice-Chairman, on the basis of the requisition received by the Sub-Collector, must be attended by a majority of two-third members having right to vote. Section 46-B(2)(g) of the Act has therefore got nothing to do with the initiation of the process for convening the meeting to vote on the no confidence motion which is separately dealt by Section 46-B(2)(a) of the Act. On facts of the case, total number of members having right to vote in the aforesaid Panchayat Samiti being 26 (including two ex-officio members, i.e., Member of Parliament, and Member of Legislative Assembly), the minimum members, according to Section 46-B(2)(g), to be necessarily present at the meeting convened for passing a resolution of no confidence under Section 46-B(1), should be 18 i.e., a majority of two-third of the members. If the number of

members attending such meeting falls short of 18, as per the mandate of the said provision, the resolution shall stand annulled. Since in the present case, total 23 members of the Panchayat Samiti having right to vote, including the appellant, attended the meeting dated 31.12.2019 and casted their votes, the argument of the learned counsel for the appellant that Section 46-B(2)(g) stood violated, cannot be countenanced.

23. In the instant case, upon a meticulous analysis of the provisions contained under Section 46-B, more particularly, Sections 46-B (1), 46-B(2)(a) and 46-B(2) (g) of the Act, and in view of the above discussions, we are inclined to hold that even if 15 members intending to move a requisition for No Confidence Motion against the appellant signed the resolution in the meeting dated 17.12.2019, that number being more than requisite one-third of the total number of members, could be taken as sufficient compliance of Section 46-B (2)(a) of the Act. It however is significant to note that for the purpose of convening special meeting envisaged in Section 46-B (1), it is not the requirement of law that the requisition of No Confidence Motion on Section 46-B(2)(a) should be preceded by a resolution of the Samiti. Even otherwise, the resolution passed on 17.12.2019 cannot be said to be final resolution as required under Section 46-B(1) of the Act. It was merely initiation of a process to move the competent authority to call for a special meeting for vote on No Confidence Motion. That resolution paled into insignificance because the requisition dated 20.12.2019 along with proposed resolution was later separately submitted to the Sub-Collector under the signature of 15 members having right to vote which constitutes more than one-third of the total members having right to vote on No Confidence Motion against the appellant. Their signatures were duly verified by the Sub-Collector, Bhawanipatna to satisfy himself that it was duly signed by 15 members. After being fully satisfied about the authenticity of the signature of those members, the Sub-Collector issued the impugned notice dated 21.12.2019 to the appellants and all other members of the Samiti fixing 31.12.2019 as the date for convening the Special meeting to consider the No Confidence Motion against the appellant. Total 23 members, out of 26, having right to vote, including the appellant attended the said meeting and have casted their votes by secret ballot. All the mandatory requirements of Section 46-B of the Act were thus fully satisfied.

24. In view of the above discussion, we do not find any infirmity in the impugned judgment. The Writ Appeal being devoid of any merit is liable to be dismissed and is accordingly dismissed.

There shall be no order as to costs.

The respondent Nos. 1 to 4 shall now proceed to forthwith declare the result of the voting on No Confidence Motion held on 31.12.2019.