
(1969) 07 OHC CK 0041
In the Orissa High Court
Case No : O.J.C. No. 166 of 1969

Anadi Charan Das

APPELLANT

Vs

The State of Orissa and Others

RESPONDENT

Date of Decision : 17-07-1969

Acts Referred:

Orissa Panchayat Samiti and Zilla Parishad Act, 1959 — Section 46B, 49B(2)
Orissa Zilla Parishad (Conduct of Business) Rules, 1960 — Rule 13, 49

Citation : (1970) 36 CLT 153

Hon'ble Judges : G.K. Misra, C.J.; R.N. Misra, J

Bench : Division Bench

Advocate : R. Mohanty, R.K. Kar and Indrajit Ray, for the Appellant; A.G., for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, C.J.—The Petitioner was elected as Chairman of Hadasahi Panchayat Samity, consisting of 19 members, in November 1967. He assumed office on 15-1-1968. On 29-11-1968, a elected members requisitioned a special meeting for passing a vote of no confidence against him. The Sub-Divisions Officer issued a notice on 5-12-1968 fixing 30-12-1968 for holding the meeting. On that day the meeting was held. Out of the 19 members, 13 voted in support of the resolution.

2. Mr. Mohanty for the Petitioner advances two contentions. The first is that u/s 49-B(2)(h) of the Orissa Panchayat Samity and Zilla Parishad Act, 1959 read with Rule 13 of the Orissa Zilla Parishad (Conduct of Business) rules, 1960 (hereinafter to be referred to as the rules), unless 14 votes are cast in support of the resolution, the vote of No confidence cannot be passed. This contention necessitate an examination of the aforesaid provisions.

Section 46-B(2)(h) of the Act runs thus:

(h) if the resolution is passed at the meeting supported by a majority of two-

thirds members having a right to vote, the Sub-divisional Officer shall forward the resolution to the authority prescribed in pursuance of Sub-section (1).

Rule 13 is as follows:

13. A quorum for the meetings of the Parishad or Samity shall be one-third of the total number of non-official members then on the roll of the Parishad or Samity:

Provided that in cases where the number of members then on the roll is not evenly divisible by three, the one-third shall be ascertained by taking the number next above the whole number which is evenly divisible by three as the number to be divided.

Mr. Mohanty contends that the rule laid down in the proviso is applicable to Section 46-B(2)(h). This contention is not sound. The proviso clearly refers to a case of quorum wherein the number is to be enhanced to an even number to be divisible by three. This does-not apply to the actual voting which is to be confined to a majority of two-thirds of the members. In this case the total number of members was 19, two thirds of which is 13. The vote of No confidence was accordingly passed by a majority of two-thirds members. The first contention has no substance and is accordingly rejected.

3. Mr. Mohanty next contended that the resolution was not moved in accordance with the statute and the rules. Section 46-B(2)(a) of the Act lays down that no such meeting shall be convened except on a requisition signed by at least one-third of the members having a right to vote, along with a copy of the resolution proposed to be moved at the meeting. The underlined expression clearly shows that at the meeting where the vote of No confidence is to be passed, the proposed resolution is to be moved, and the resolution cannot be passed unless it is moved.

4. Section 46-B(2)(f-l) says that no such resolution can be taken up for consideration unless it has been moved at the meeting. Rule 49 lays down that every resolution which is moved shall be seconded; otherwise it shall not be discussed, nor shall any question be put on it. Regarding these provisions together, conclusion is irresistible that the resolution recording the vote of No confidence has no legal validity unless it is moved at the meeting. "Moved" means that the resolution must be proposed and seconded.

5. In the counter-affidavit filed on behalf of the State there is no denial of the averment made in the petition that, in fact, the resolution was not proposed and seconded at the meeting.

The counter affidavit runs thus:

The resolution with the name of the proposer and seconder was read out in the meeting. The resolution to be passed was duly proposed and seconded before it was sent to the Sub-Divisional Officer as required u/s 46-B of the Orissa

Panchayat Samity and Zilla Parishad Act, 1959.

On the accepted position that at the meeting which was convened the resolution was not proposed and seconded, the resolution cannot be said to have been moved, and accordingly it has no legal validity. The vote of No confidence passed against the Petitioner at the meeting held on 30-12-1968 cannot therefore dislodge him from the office of Chairman of the Panchayat Samity. The fact that before issue of notice the resolution was proposed and seconded does not amount to compliance with Section 46-B(2)-(f-I) read with Rule 49.

6. On the aforesaid discussion, the petition must succeed. We would accordingly hold that the Petitioner cannot be removed from Chairmanship of the Samity on the basis of the resolution passed on 30-12-1968. We would therefore issue a writ of mandamus directing that the said resolution should not be given effect to. The writ application is allowed with costs. Hearing fee Rs. 100/- (Rupees one hundred only).

R.N. Misra, J.

7. I agree.