
(1977) 08 OHC CK 0041
In the Orissa High Court
Case No : O.J.Cs. No. 1201 of 1976

Arjuna Patra and Jugal Kishore Agarwal	APPELLANT
Vs	
State of Orissa and Others	RESPONDENT

Date of Decision : 04-08-1977

Acts Referred:

Orissa Municipal (Councillors) Election Rules, 1950 — Rule 61
Orissa Municipal Act, 1950 — Section 39, 47, 47(1), 47(2)
Orissa Municipal Rules, 1953 — Rule 8

Citation : (1977) 44 CLT 439

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Advocate : L. Rath, for the Appellant; Additional Government Advocate and S.C. Mohapatra, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—Petitioner in each of these writ applications is a resident of Karanjia Town in the district of Mayurbhanj. He was elected as a councillor of the Karanjia Notified Area Council in February, 1976, but the publication of the name was notified only on 28-9-1976. Under the provisions of the Orissa Municipal Act (hereinafter referred to as the "Act") election of Chairman and Vice-Chairman has to be made within thirty days from the date of publication of the names of councillors in the Gazette. Notice of election of Chairman and Vice-Chairman was given on 26-10-1976 and many of the Councillors were served late at night that election would be held at 11 a.m. on the following day i. e.. 27-10-1976. In these two applications each of the Petitioners challenges the entire election process to have been vitiated on account of undue interference by Government in directing stay of the election after it had commenced and again re-directing the election process to continue where it has been stayed; election had been made on the basis of double-member constituency in three of the wards notwithstanding the position that double member wards had been abolished as a result of the Amending Act 32 of 1975 i.e. long before actual election was held;

and there was no reasonable notice for the holding of the election.

2. The State of Orissa and the District Magistrate as also the Sub-Divisional Officer have appeared through the State Counsel and have filed a Counter affidavit. Opposite parties 4, 6 to 12, 15, 16 and 19 have filed two counter affidavits. Each of these affidavits has tried to support the election to the Council as also election to the posts of Chairman and Vice-Chairman.

3. Though in the writ application, the election to the Council had been assailed, at the hearing Mr. Rath for the Petitioner in each of the cases does not press for that relief. Accordingly it is no more necessary to examine whether the election to the Notified Area Council has been vitiated on account of admitted interference with the election programme by the State Government on the ground of internal Emergency. Mr. Rath for the Petitioner had relied upon a Bench decision of this Court in *Amulya Pahi and Anr. v. Election Officer-cum S.D.O. Anandapur and Ors.* O.J.C. No. 2171 of 1975, disposed of on 27th July, 1977, where considering the validity of a Panchayat Samiti election, which had been stayed in the middle this Court has observed:

... Besides, on account of such an interference the freeness of the election which the Statute and the Rules made thereunder seek to ensure has been affected. If the power to stop an election after the process is stated and to hold it from a particular stage as and when it is found convenient is conceded to the State Government the consequences would indeed be serious and such election would not be in keeping with the spirit of the Statute. It is quite possible that the political party power would try to abuse the process.

While Mr. Rath for the Petitioner had relied upon the aforesaid observations on behalf of the opposite parties reliance is placed on Rule 61 of the Orissa Municipal (Councillors) Election Rules, 1950, which specifically authorises re-fixation of dates and periods other than those specified, or fixed by or under the Rules for all or any of the stages of the election proceedings. Election under a statute, as pointed out by the Supreme Court in the case of *Jagan Nath Vs. Jaswant Singh and Others*, is a statutory proceeding and rights of parties have to be determined on the basis of the statutory provisions. We are not required to examine the ambit of Rule 61 and, therefore, we need not decide as whether a variation of the programs as done in the present case is still to be covered by Rule 61.

4. The main question for consideration in the writ application is as to the validity of the election of Chairman. Section 39 of the Act provides that the names of the Councillors shall be published in the Gazette. As already noted above, such publication was made on 28-9-1976. Section 47 of the Act provides:

(1) At the first meeting of a municipal council, called at the instance of the Magistrate of the district, a Chairman and Vice-Chairman shall be elected from among their own number. The Magistrate of the district shall have no right to vote.

(2) Such election shall take place within thirty days from the date of publication of the names of councillors in the Gazette u/s 39....

Publication of the results having been made on 28-9-1976, election of Chairman and Vice-Chairman had to be made by 27-10-1976. Notice of the meeting was given under Annexure-3. Admittedly many of the Councillors received this notice at or after 10 P.M. of 20-10-1976. This notice could not be served at Rourkela. Eleven of the Councillors objected before the Sub-Divisional Officer under Annexure-4 on the ground that there was no appropriate notice and even one of them had not yet been served. They, therefore, wanted the election to be deferred. The Magistrate of the district overruled the objection and proceeded to hold the election. Thereupon three of the Councillors went out of the place of meeting and one Susil Chandra Sahu also did not participate though present. It is contended that for want of notice, the election vitiated. It may be noted here that there is no relief claimed against the election of Vice-Chairman.

5. The Act or the Rules made thereunder for the propose of holding of election do not provide any particular form of notice. Section 47 of the Act, however, clearly provides that such election would be at the first meeting of the Municipal Council. Rule 8 of the Orissa Municipal Rules of 1953 (hereinafter referred to as the "Rules") make the following provision:

The Chairman shall send to every Councillor at least three clear days notice of all meetings except adjourned meeting; provided in case of any sudden emergency, the Chairman or in his absence the Vice-Chairman shall be competent to call a meeting at shorter notice.

it is true that Rule 8 as such may not apply to the meeting referred to u/s 47(d) of the Act, but the Rule offers enough guideline and notice of the first meeting u/s 47(l) of the Act unless such a meeting was on account of any sudden emergency should have been convened with three days" notice.

6. Learned Additional Government Advocate, as also Mr. Mohapatra appearing for [he different opposite parties ingeniously contended that Section 47(2) is itself notice to the Councillors that within thirty days from the date of publication of the result u/s 39 of the Act, election is to take place. We do not think it necessary to go into the question because on the face of it, it has to be rejected. Sub-section (1) of Section 47 contemplates of a meeting and a meeting would ordinarily envisage notice specifying place, time and other particulars and intimation to all the Counsellors. We are not inclined to agree with the submission made on behalf of the opposite parties that the statutory provision in Section 47(1) of the Act is itself notice for the holding of a meeting. Holding of a meeting would envisage specification of place, time and other particulars. In the absence of these, there would not be a valid meeting. Since we are not prepared to accept that the meeting was on account of any emergency, we are inclined to agree that reasonable notice to which Councillors were entitled would have been at least of three days as provided in Rule 8.

Admittedly, the notice of the meeting was served during the previous night and not even a day's gap intervenes for election of a Chairman and a Vice-Chairman in the democratic process and the elected Councillors have the right of voting. It would, therefore, following that the intending candidates were entitled to canvass for support of their cause and if reasonable notice had been given that could have been conveniently done.

The elected members could not obviously stay at the station for the entire month from the date of publication of the results of election as Councillors until election of Chairman and Vice-Chairman was to be done. Keeping the ordinary human conduct in view, we must assume that the Councillors had their personal affairs to attend to and naturally they could not find it convenient to stay at the station in anticipation of the election. Non-service of notice on the absentee member is on account of the fact that notice was too short. Similarly, those who protested or participated were put to serious inconvenience on account of want of reasonable notice. Given reasonable opportunity to canvass among the Councillors the cause of any particular member, it is quite possible that the result would have been different from what it has been. No reason has been disclosed as to why no notice had been served until late at night of the previous day, particularly when the mandate of the Statute must have been known to the concerned authorities. Reliance has been placed by Mr. Rath for the Petitioner on the decision of the Judicial Committee in the case of *Radha Kishan Jaikishan (Firm) and Ors. v. Municipal Committee, Khandwa* (1920) 89 L.J.K.B. 563, *Young v. Ladies Imperial Club, Lim.* Both these decisions support the stand of Mr. Rath. We are inclined to agree with Petitioners' submission that there has been no reasonable notice and consequently there has been prejudice. If appropriate notice had been given, it is quite possible that all the Councillors would have attended and the ultimate result may have had been different.

7. Notice in this case has been so insufficient that we are not inclined to go by the rule of prejudice. When a statutory authority acts under the mandate of the statute and his action concerns vitally other persons, it is imperative that the statutory authority should put the other persons concerned to reasonable notices that he is going to act; otherwise chaos is bound to result and in most of the cases injustice would creep in. As we hold that reasonable notice is inherent in the scheme such notice has not been given; we think it appropriate not to draw any rule of prejudice as the turning factor, but to strike down the action as being contrary to the legal requirement. In these circumstances, we have come to the conclusion that the election of Chairman is vitiated and cannot at all be upheld.

8. Mr. Mohapatra for some of the Councillors contended that when Petitioners are not challenging the election of Vice-Chairman which was equally vitiated, it would not be proper for us to interfere with the election of Chairman. According to him, there would be inconsistency in our decision. We are not inclined to uphold this objection. It is not out of jurisdiction to interfere with all illegal actions. Petitioners have confined their relief to the election of Chairman and validity of

that election was being examined by us.

9. We accordingly allow each of the applications, quash the election of the Chairman and direct that the Magistrate of the district should hold fresh election for the post of Chairman of the Notified Area Council of Karanjia in accordance with law. There would be no order for costs.

K.B Panda, J.

10. I agree.

Applications allowed.