

(1976) 11 OHC CK 0020
In the Orissa High Court
Case No : O.J.C. No. 986 of 1976

Bishnu Charan Raul

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 09-11-1976

Acts Referred:

Orissa Grama Panchayat Act, 1964 — Section 24, 24(1), 24(2)
Orissa Grama Panchayat Rules, 1968 — Rule 230, 232, 238, 239, 241
Orissa Panchayat Samiti and Zilla Parishad Act, 1959 — Section 46

Citation : (1977) 44 CLT 165

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

Bench : Division Bench

Advocate : R. Mohanty, for the Appellant; Government Advocate and R.C. Patnaik, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, J. 1. Petitioner was the Sarpanch of Mandasahi Grama Panchayat within the district of Cuttack and the said Grama Panchayat has nineteen members in all including the Sarpanch. On 2-6-1976, sixteen members of the Grama Panchayat asked the Sub-Divisional Officer of Jagatsinghpur under Annexure-1 that a meeting of the Grama Panchayat be specially convened for consideration of a motion of no confidence against the Sarpanch and appended to the requisition a draft copy of the resolution (Annexure-2). On 4-8-1976, notice of the meeting was given by the Sub-Divisional Officer (opposite party No. 3) fixing it to 26-8-1976. On that day, thirteen persons voted in support of the resolution while six persons including the Petitioner voted against it. The resolution was passed. The Petitioner has asked for quashing the resolution and to require the opposite parties to refrain from giving effect to the same.

2. It is contended:

(a) The requisition had been withdrawn on 11-7-1976 and, therefore, no meeting could be held on the basis of the earlier requisition under Annexure-1;

(b) It is mandatory that a copy of the resolution has to accompany the requisition and it was not so done;

(c) The meeting and its proceedings are invalid on account of the fact that

(i) no resolution has been passed at the meeting as required u/s 24(1) of the Orissa Grama Panchayat Act; and

(ii) for the order that the resolution may be validly passed, there must be compliance with the Rules made under the Grama Panchayat Act.

Reliance is placed on Rules 232, 238, 239, 241 and 242 of the Rules under the Act and it is contended that the resolution was neither proposed nor seconded not was there any debate as required under the Rules. In the circumstances, the resolution is not operative

3. The Panchayat Extension Officer has filed an affidavit on behalf of opposite parties 1 to 4. Many of the members of the Grama Panchayat applied to be impleaded in the proceeding and leave having been given, they have also filed a separate counter affidavit.

4. On perusing the pleadings and hearing both sides, we are of the view that three questions arise for consideration. They are:

(1) Is there a valid requisition?

(2) Whether the requisition was withdrawn as a fact? And if so, can a requisition given u/s 24 of the Act be withdrawn?

(3) Has the resolution been passed as required under the Act?

5. Annexure-1 is the requisition dated 2-6-1976 addressed to the Sub-Divisional Officer. Annexure-2 is the draft resolution. At its foot, it has been clearly indicated that the members were of the view that the Sarpanch had lost the confidence on account of several defaults and irregularities and in the interests of the Grama Panchayat, it was not appropriate that the Sarpanch should continue to hold office any longer. Annexures 1 and 2 read together clearly show that there were both a requisition as also a draft resolution. The procedure indicated in Sub-section (2) of Section 24 of the Act has been substantially satisfied and we, therefore, find no merit in the first contention.

6. Section 24(2)(a) of the Act provides that the vote of no confidence against the Sarpanch shall not be passed except at a specially convened meeting and no such meeting shall be convened except on a requisition signed by at least one-third of the total members of the Grama Panchayat along with a copy of the resolution proposed to be moved at the meeting. The scheme u/s 24 of the Act is that a requisition shall be first addressed to the Sub-Divisional Officer signed by at least one-third of the total membership of the Grama Panchayat along with a copy of the resolution proposed to be moved at the meeting. Once the requisition is received, it is the duty of the Sub-Divisional Officer to take steps to convene a

special meeting and the resolution has to be voted upon at the meeting. Undoubtedly, there is no provision for withdrawing a requisition. The scheme of the Act seems to be that once a requisition is given, there should be no interference of any other agency and the propriety of the requisition has to be considered in the meeting of the Panchayat. That, indeed is conducive to the democratic process and we are inclined to agree with the contention on behalf of the opposite parties that once a valid requisition is there, there is no scope for withdrawal and it has to be tested at the meeting. We would accordingly hold that the requisition was not open to be withdrawn.

There is serious dispute about the truth of the allegation of withdrawal. Many of the persons who are said to have withdrawn from the requisition filed affidavit saying that they have not done so and it is alleged that their signatures have been forged. It is not for us in this proceeding to enquire as to which version is true. Our conclusion that there is no scope for withdrawal is sufficient for the present purpose.

7. It is next contended that the resolution had to be proposed and seconded, a debate should have followed and then only voting should have taken place. In support of this contention, reliance is placed on the Rules appearing under the heading "Quorum and adjournment of Proceedings of Meetings" (Rules 230 - 248). Support is also claimed from a decision of this Court In the case of Anadi Charan Das v. The State of Orissa and Ors. 36 (1970) C.L.T. 158. The Bench decision referred to by Mr. Mohanty for the Petitioner was with reference to the provisions in the Orissa Panchayat Samiti and Zilla Parishad Act of 1959. Para 4 of the judgment shows:

Section 46-B2(f-I) 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.

Reading 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.

This decision based upon an interpretation of the special provisions in the particular Act cannot be implanted into the present case because there is no such requirement in the Grama Panchayat Act or the Rules made thereunder. Again, the Rules on which reliance is placed seem not to be applicable because Sub-section (2) of Section 24 reads thus:

In convening a meeting under Sub-section (I) and in the conduct of business at such meeting the procedure shall be in accordance with such rules, if any, as may be prescribed, subject, however, to the following provisions, namely:

...

Detailed procedure has been provided in Clauses (a) to (k) occurring in Sub-section (2) of Section 24 and the voting procedure is by separate ballots. The Rules upon which reliance has been placed by Mr. Mohanty for the Petitioner do not fit in with voting by ballots. Again, the Rules clearly purport to make provision for ordinary meetings of the Grama Panchayat. Section 24(1) of the Act indicates that the resolution is to be discussed at a specially convened meeting and there is clear provision that the meeting shall not be adjourned and as provided in Clause (1) if at the meeting the number of members present is less than two-thirds of the total membership of the Grama Panchayat, the resolution would automatically stand annulled. The proceeding of a meeting u/s 24 of the Act, therefore, is not covered by the set of Rules on which Mr. Mohanty relies. We are also not prepared to agree with his contention that unless the resolution is proposed and seconded and a debate follows, the resolution cannot be said to have been carried.

8. All the contentions of Mr. Mohanty, therefore, fail. The writ application has no merit and is dismissed. We, however, make no order for costs.

N. K. Das, J.

I agree.

Application dismissed.