

(2006) 07 OHC CK 0008
In the Orissa High Court
Case No : Writ Petition (C) No. 12712 of 2005

Chandrama Naik		APPELLANT
	Vs	
State of Orissa and Others		RESPONDENT

Date of Decision : 14-07-2006

Acts Referred:

Orissa Grama Panchayat Act, 1964 — Section 24, 24(2), 24(3)

Citation : (2006) 1 OLR 1038 Supp

Hon'ble Judges : N. Prusty, J;I.M. Quddusi, J

Bench : Division Bench

Advocate : Samarendra Mohanty, L.N. Patel, N.K. Das and S. Singh, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

I.M. Quddusi, J.—Heard learned Counsel for the Petitioner Mr. Samarendra Mohanty, learned Additional Government Advocate for the opposite party Nos. 1 to 5 and Shri Mitrajeet Rath, learned Counsel for the caveator and intervenor.

2. The Petitioner, who is the Sarpanch of Jharmunda Grama Panchayat in the district of Jharsuguda was elected as such in the year 2002. The term of office of the Sarpanch is 5 years from the date fixed for its first meeting. Therefore, his term of office would expire in 2007 on completion of five years.

3. A meeting of the members of the Grama Panchayat convened by Naib Sarpanch was held on 11.9.2005 in which a resolution signed by nine Ward Members, out of total number of fifteen Ward Members of the Grama Panchayat, to consider the no confidence against the present Petitioner (Sarpanch) was proposed to be moved. Consequently a requisition for convening the meeting was sent to the Sub Divisional Officer concerned. On receipt of the requisition, the Sub Collector, Jharsuguda fixed 20.10.2005 for the meeting to consider the proposed resolution regarding loss of confidence in the Sarpanch vide his notice dated 12.9.2005 circulated to the members of the Grama Panchayat including

the present Petitioner to remain present in the meeting.

4. The Petitioner has challenged the above mentioned notice dated 12.9.2005 of the Sub-Collector on the ground that earlier a similar requisition for convening a meeting was sent to the Collector after holding a meeting by some of the members of G.P. headed by the Naib Sarpanch to consider proposed no confidence motion on 23.8.2005, but the Sub Collector after careful consideration of the said requisition rejected the same vide order-dated 9.9.2005. But only three days thereafter, i.e. on 11.9.2005, the Naib Sarpanch convened another meeting attended by nine members of the G.P. passed the aforesaid resolution and sent the requisition accordingly. According to the learned Counsel for the Petitioner, the subsequent requisition dated 11.9.2005 passed by nine members headed by Naib-Sarpanch is against the law on the ground that it has been provided in Sub-Section 3 of Section 24 of the Orissa Grama Panchayat Act (herein after referred to as "the Act") that when a meeting has been held in pursuance of Sub-section (2) of Section 24 of the Act for recording want of the confidence in the Sarpanch or Naib-Sarpanch as the case may be, no fresh requisition for meeting shall be maintainable in cases falling under Clauses (i) and (j) of the said Sub-section or where the resolution is defeated after being considered at the meeting so held, before the expiry of one year from the date of such meeting.

5. Before proceeding further, it is necessary to peruse the relevant provisions of Section 24 of O.G.P. Act which are quoted as here under:

24. Vote of no confidence against Sarpanch or Naib-Sarpanch -(1) Where at a meeting of the Grama Panchayat specially convened by the Sub-Divisional Officer in that behalf a resolution is passed supported by a majority of not less than two-thirds of the total membership of the Grama Panchayat, regarding want of confidence in the Sarpanch or Naib-Sarpanch the resolution shall forthwith be forwarded by the Sub-Divisional Officer to the Collector, who shall immediately on receipt of the resolution publish the same on his notice-board and with effect from the date of such publication the member holding the office of Sarpanch or the Naib-Sarpanch, as the case may be, shall be deemed to have vacated such office.

2. In convening a meeting under Sub-section (1) and in the conduct of business at such meeting the procedure shall be in accordance with such rules, as may be prescribed, subject however to the following provisions, namely;

(a) no such meeting shall be convened except on a requisition 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;

(b) the requisition shall be addressed to the Sub-Divisional Officer;

(c) the Sub-Divisional Officer on receipt of such requisition shall fix the date, hour and place of such meeting and give notice of the same to all the members

holding office on the date of such notice along with a copy of the requisition and of the proposed resolution, at least fifteen clear days before the date so fixed;

XXXX

3. When a meeting has been held in pursuance of Sub-section (2) for recording want of confidence in the Sarpanch or Naib-Sarpanch, as the case may be, no fresh requisition for a meeting shall be maintainable-

(a) in cases falling under Clauses (i) and (j) of the said Sub-section or where the resolution is defeated after being considered as the meeting so held, before the expiry of one year from the date of such meeting;

XXXX

6. A perusal of Section 24(2)(a) as quoted above shows that no resolution proposed to be moved for want of confidence in the Sarpanch or Naib Sarpanch is maintainable unless the requisition is signed by a majority of not less than one third of the total membership of the G.P. concerned. However, Clause 3(a) of Section 24 quoted above shows that if the number of members present in the meeting is less than two third of the total members of the G.P., the resolution stands annulled. Therefore, even if, in a meeting any resolution has been passed regarding want of confidence in the Sarpanch or Naib-Sarpanch, the same shall automatically stands annulled.

7. However, a bare reading of Clauses (a), (b) and (c) of Sub-section (2) of Section 24 show that no meeting shall be convened to consider the resolution regarding want of confidence in the Sarpanch without forwarding a resolution proposed to be moved at such meeting and requisition of such meeting shall be addressed to the Sub Divisional Officer and such a resolution proposed to be moved at the meeting can not be passed by less than one third of the total members of the G.P., meaning thereby that if a resolution is proposed to be moved for a meeting to be convened for want of confidence in Sarpanch or Naib-Sarpanch, as the case may be, it is necessary that at least one third of the total members of the G.P. should sign such proposed resolution and also a requisition should be sent for convening the meeting to be addressed to the Sub Divisional Officer of the concerned area. The Sub Divisional Officer can only act on receipt of such requisition and in that case, it would be his duty to fix the date, hour and place of such meeting and give notice of the same to all the Members of the G.P. with a copy of the requisition and of the proposed resolution and there should be at least 15 clear days gap between the notice and the date fixed for the meeting.

8. In the instant matter, the requisition for convening the meeting regarding want of confidence in the Petitioner as Sarpanch was passed on 23.8.2005. When the Sub Collector received it, he did not find the same in accordance with law and reject the same vide his order-dated 9.9.2005. Thereafter, another requisition was sent signed by nine members including the Naib Sarpanch and the resolution along with the copy of resolution for want of confidence proposed

to be moved was sent to Sub Collector for convening a meeting for that purpose on 11.9.2005 on which after finding the same in accordance with law, the Sub Collector issued impugned notice fixing the date, time and place of the meeting, which is under challenge in the instant writ petition, as already mentioned above.

9. The restriction imposed in Sub-section (3) of Section 24 of the Act is in respect of the meeting recording no confidence, according to which, if a meeting has been held for recording of no confidence in the Sarpanch or Naib Sarpanch, as the case may be, no fresh requisition for the meeting shall be maintainable before expiry of one year from the date of such meeting.

10. In the instant case, when no meeting was ever held for recording want of confidence in the Sarpanch, before the issuance of the impugned notice, the provisions of Sub-section (3) of Section 24 would not be applicable at all.

11. There is no restriction in law to sign requisition by the Members of the G.P. and to forward the same along with the copy of the resolution proposed to be moved to the Sub-Divisional Officer. Therefore, any number of requisitions may be sent by the members of the G.P., but once a meeting is convened on the basis of the proposed resolution, considering the recording of want of confidence, no further meeting can be held within a period of one year from date of such meeting.

12. As already discussed above, no such meeting was ever held in the instant case to consider the resolution regarding want of confidence in the Sarpanch, the contentions raised by the learned Counsel for the Petitioner, are not sustainable in law. In view of this, the writ petition lacks merit and is dismissed accordingly.

13. Interim order dated 7.10.2005 is discharged. Consequently, the result of no confidence motion may be declared in accordance with Clause (j) of Sub-section (2) of Section 24 of the Orissa Grama Panchayats Act. No order as to cost.

N. Prusty, J.

14. I agree.