
(2006) 11 OHC CK 0012
In the Orissa High Court
Case No : Writ Petition (C) No. 6374 of 2005

Dasaratha Munda

APPELLANT

Vs

Collector and Others

RESPONDENT

Date of Decision : 14-11-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Orissa Grama Panchayat Act, 1965 — Section 24(1), 24(2), 24(3), 25(2), 26(2)

Citation : (2007) 1 OLR 242 Supp

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

Bench : Division Bench

Advocate : S.C. Samantaray, S. Behera, C. Nayak and A.K. Panigrahi, for the Appellant; Additional Government Advocate for O.P. Nos. 1 and 2 and D.K. Pradhan, O.P. Nos. 3 to 5, for the Respondent

Final Decision : Dismissed

Judgement

I.M. Quddusi, J.—Heard Mr. S.C. Samantaray, learned Counsel for the Petitioner, learned Additional Government Advocate for opposite parties 1 and 2 Mr. D.K. Pradhan, learned Counsel for opposite parties 3 to 5.

2. A requisition was signed by 11 ward members out of total 13 members of Udayapur Grama Panchayat in the district of Keonjhar along with a resolution proposed to be moved at the meeting to consider the said no confidence motion to the Sub Collector, Keonjhar u/s 24(2) of the Orissa Grama Panchayat Act, on which he issued the impugned notice for convening the meeting to this effect on 28.04.2005 fixing 17.05.2005, against which the instant writ petition has been filed.

3. The brief facts of the case are that the Petitioner was elected as Sarpanch of Udayapur Grama Panchayat in the district of Keonjhar in the year 2002. The Petitioner contends that though opposite parties 3 to 5 have incurred disqualification u/s 25(2)(b) of the Orissa Grama Panchayat Act, 1965 for not attending three consecutive meetings, they signed on the resolution of the

Grama Panchayat and the Sub Collector has issued notice to them to attend the meeting scheduled to be held on 17.05.2005 for holding "no confidence motion" against him. The Petitioner further contended that though notice was purportedly issued on 28.04.2005, in fact the Petitioner received the same on 05.05.2005. As such there was no clear 15 days gap for holding the meeting. Accordingly the Sub-Collector/opposite a party No. 2 by issuing notice dated 28.04.2005, basing on the one year old resolution of the Ward Members for voting "no confidence motion" against the Petitioner violates Section 24(1) of the Orissa Grama Panchayat Act, which is liable to be quashed.

4. Learned Counsel for the Petitioner has also raised the contentions that two recommendations cannot be made in a year for holding no confidence motion, the resolution to hold no confidence motion is a manufactured document and the requisition did not contain the proposed resolution. He has further contended that 3 ward members, who had signed the requisition and the resolution, had not attended three consecutive meetings of the Grama Panchayat held on 31.01.2005, 25.02.2005 and 30.03.2005 respectively and therefore, they were automatically deemed to be disqualified.

5. In respect to his first contention that two recommendations cannot be made in a year for holding the meeting of no confidence motion are not supported by any document or the proposition of law. In the writ petition, only this much has been mentioned in paragraph-6 to the effect that the meeting regarding consideration of resolution of no confidence motion has been convened on the basis of the resolution which was passed in June 2004. In support of his contention he has referred to the provisions of Clause (a) of Sub-Section 3 of Section 24 of the Orissa Grama Panchayat Act (herein after referred to as "the Act") which is quoted as under:

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 failing under Clause (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; xxx xxx.

6. Perusal of the above quoted provisions shows that it restricts a fresh requisition with in a span of one year from the earlier requisition but in the instant case, no earlier requisition exists and the request made on the basis of which the meeting has been held is a sole requisition and therefore the above Clause would not be applicable in the instant case.

7. The next contention is that the recommendation to hold a no confidence motion is a manufactured document. It is an admitted fact that the disputed questions of facts cannot be determined by this Court in exercise of its power conferred on it under Article 226 of the Constitution and further opposite parties 3 to 5 were the signatories of the requisition and the resolution, who are

represented by learned Counsel Mr. D.K. Pradhan. According to Mr. Pradhan as well the counter affidavit filed by the opposite parties, the said requisition and the resolution have been signed by 11 members out of 13, i.e. the total strength of the Grama Panchayat concerned, which are genuine documents. The minimum requirement for signing the requisition and the resolution under the Act is 1/3rd of the total strength, which comes to 4.33 i.e., round up 5.

8. The 3rd contention is that the requisition did not contain the proposed resolution. It is to be noticed that the Petitioner himself in paragraph-6 of the writ petition has mentioned that the meeting has been convened on the basis of the old resolution meaning thereby- he concedes that the documents sent along with the requisition was a resolution. Besides this, the words at the top of the enclosure to the letter of Annexure-3 "Swatantra Baithakare Alochana Hebaku Thiba Prastab" have been mentioned, which means, the proposed discussion to be made in the special meeting with regard to the proposed no confidence motion. In that last four lines of the said enclosure the contents of the resolution have also been mentioned in clear terms. According to Chambers English Dictionary, we make it clear that "resolution" means, "a formal proposal put before a meeting, or its formal determination thereon". Therefore, this contention is also not sustainable in the eye of law.

9. With regard to the last contention that since three members were deemed to be disqualified as they had not attended three consecutive ordinary meetings, it is to be noticed that at the time when the meeting was convened on the basis of the requisition and the resolution for proposed no confidence motion, no proceeding against these members are pending and in view of the Act, a ward member cannot be deemed to be disqualified without providing him an opportunity of being heard and thereafter determining his disqualification by the Collector. In this regard, the provision of Sub-section (2) of Section 26 of the Act is quoted as under:

xxx xxx (2) The Collector may suo motu or on receipt of an application under Sub-section (1), make such enquiry as he considers necessary and after giving the person whose disqualification is in question an opportunity of being heard, determine whether or not such person is or has become disqualified and make an order in that behalf which shall be final and conclusive.

Further Sub-Section (3) of Section 26 of the Act is quoted as under:

(3) where the Collector decides that the Sarpanch, Naib-Sarpanch or any other member is or has become disqualified such decision shall be forthwith published by him on his notice-board and with effect from the date of such publication the Sarpanch, Naib-Sarpanch or such other member, as the case may be, shall be deemed to have vacated office, and till the date of such publication he shall be entitled to act, as if he was not disqualified.

10. In view of the above-mentioned facts and circumstances of the case, this Court is of the opinion that the contentions raised by the learned Counsel for the

Petitioner are not sustainable in the eye of law. In view of the above, in our considered opinion, the writ petition devoids of any merit and is liable to be dismissed and as such the same is accordingly dismissed. No order as to costs. The interim order passed earlier stands discharged.

11. At this stage, learned Additional Government Advocate has informed that since this Court had passed an interim order allowing the Sub-Collector, Keonjhar to hold meeting subject to the condition that the resolution a passed in accordance with the provision of Sub-section (1) of Section 24 of the Act shall not be published without leave of this Court, the meeting was convened, but the resolution passed in the meeting has not been published so far. Since we have already dismissed the writ petition, it is open for the Sub-Collector or the Collector of the District concerned to declare the resolution of the meeting and publish the same in accordance with law.

N. Prusty, J.

12. I agree.