

(1964) 09 OHC CK 0016
In the Orissa High Court
Case No : O.J.C. No. 295 of 1963

Govinda Chandra Pradhan

APPELLANT

Vs

S.D.O. Sadar and Others

RESPONDENT

Date of Decision : 29-09-1964

Acts Referred:

Orissa General Clauses Act, 1937 — Section 22

Orissa Panchayat Samiti and Zilla Parishad Act, 1959 — Section 46B(2)

Citation : AIR 1965 Ori 94 : (1965) 31 CLT 217

Hon'ble Judges : R.L. Narasimham, C.J; R.K. Das, J

Bench : Division Bench

Advocate : L S. Misra and D.S. Sahu, for the Appellant; A.G. and B.P. Patnaik, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—This is an application under Article 226 of the Constitution filed by the Chairman of Panchayat Samity of Bahanga challenging the validity of the order of the Sub-divisional Officer, Cuttack (Sadar) postponing the meeting alleged to have been called on 10-8-1963 for the purpose of a vote of no-confidence against him and also the validity of the subsequent meeting held on 2-9- 1963 in which such a vote of no confidence was passed against him.

2. On a requisition by seventeen members of the said Panchayat Samity expressing want of confidence in the petitioner, the sub-divisional Officer convened a meeting for that purpose to be held on 10-8-1963 at Kuanpal Block Development Office at 2 P. M. This order was passed under Clause (c) of Sub-section (2) of section 46B of the Orissa Panchayat Samity and Zilla Parishad Act, 1959, From the counter affidavit of the sub-divisional officer it appears that due to heavy rains and his pre-occupation with work at Cuttack town he was unable to preside over the meeting of the said samity as required by statute. Hence he sent an express telegram to the Block Development Officer on 10-8-1963 instructing him to inform the members of the samity, prior to their assembling

for the meeting that the meeting would be postponed. I may quote the copy of the telegram:

"BIDIOKUANPAL:

Special meeting of Mahanga Punchayat Samity postponed. Inform members to-day before 2 P. M. (.) Notice refixing date of meeting will follow.

ESDIO."

The petitioner however alleged that no information about the postponement of the meeting was received by him and other members and that they assembled at the place at 2 P. M. on 10-8-1963 as scheduled but as the Sub-divisional Officer did not turn up till 4 P. M. they dispersed. Subsequently the sub-divisional officer gave notice of another meeting for considering the same subject to be held on 2-9-1963 at 11 A. M. At this latter meeting the vote of no-confidence was passed against the petitioner.

3. In considering the validity of the orders passed by the Sub-Divisional Officer, the relevant provision of Sub-section (2) of Section 46-B of the Act have to be carefully scrutinised. That subsection is as follows:--

"(2) In convening a meeting under Sub-section (1) and in the conduct of business at such meeting the procedure herein specified shall be followed:-- namely

(a) No such meeting shall be convened except on a requisition signed by at least one third of the members with a right to vote, along with a copy of the resolution proposed to be moved at the meeting;

(b) the requisition shall be addressed to the Collector of the district in the case of the Parishad and to the Sub-Divisional Officer in the case of a Samity.

(c) the Collector or the Sub-Divisional Officer as the case may be, on receipt of such requisition, shall fix the date, hour and place of such meeting and give notice of the same to all members with a right to vote, along with a copy of requisition and of the proposed resolution at least seven days before the date so fixed.

(d) The Collector, or when he is unable to attend the Additional District Magistrate shall preside at, and conduct the proceedings of the meetings in case of Parishad, and the Sub-Divisional Officer shall preside over and conduct such proceedings in the case of a samity.

(e) The voting at all such meetings shall be by secret ballot:

(f) No such meeting shall stand adjourned to a subsequent date and no item of business other than the resolution for recording want of confidence in the Chairman or the Vice-Chairman, shall be taken up for consideration at [he meeting.

(g) If the number of members present at the meeting is less than the majority of members having a right to vote the resolution shall stand cancelled; and

(h) If the resolution is passed at the meeting supported by the majority of members having the right to vote, the Collector, or the Sub-Divisional Officer as the case may be, shall forward "the resolution to the authority prescribed in pursuance of Sub-section (1)....."

It will be noticed that the opening words of the sub-section are "In convening a meeting under Sub-section (1) and in the conduct of business at such meeting". Clauses (a) (b) and (c) deal with matters which fall legitimately within the scope of "convening" a meeting: whereas Clauses (d) (e) (f) (g) and (h) deal with matters that relate to "conduct of the business" of the meeting. A scrutiny of Clause (d) shows that the meeting commences when the Sub-Divisional Officer or any other competent authority presides over the meeting and he conducts the proceedings of that meeting. All actions taken by him prior to his presiding over the meeting which are dealt with in Clauses (a) (b) and (c) must be held to relate to the "convening" of such meeting. Clause (c) says that the competent officer on receipt of requisition, shall fix the date, hour and place of the meeting. This statutory power to fix a date for the purpose of holding a meeting must necessarily include the power to alter that date, by virtue of Section 22 of the Orissa General Clauses Act. Hence, though in the first instance, the Sub-Divisional Officer, Sadar might have given notice to the effect that the meeting will be held on a particular date and time he has the statutory authority to alter the date if the exigencies of the situation require it. It is true that once he commences the proceeding by presiding over the meeting, the stage of convening the meeting is closed and the stage of conducting the business of the meeting is reached. It is at the latter stage that Clause (f) quoted above begins to operate and he has no jurisdiction to adjourn the meeting.

4. Apart from the language of the provisions of Section 46-B the aforesaid view is based on the well known principles dealing with law of meetings, referred to at page 74 of the Manual on the Law of Meetings by Sebag Shaw and II. A. R. J. Wilson (1947 Edition) in the following terms:

"The adjournment of a meeting is to be distinguished from the postponement. An adjournment denotes the suspension of debate or of the entire proceedings and, therefore, assumes that the proceedings have once commenced. Postponement, on the other hand, is used to indicate that the commencement of a meeting is itself deferred."

5. On the facts of the present case therefore when it is admitted that the Sub-Divisional Officer was unable to attend on the date and the time and place fixed in the original notice, it must be held that the meeting did not commence according to law; and any information sent by him prior to that time for altering the date of the meeting must be held to be for the postponement of the meeting in exercise of the statutory power conferred on him by Section 46B (2) (e) of the

Orissa Zilla Parishad and Punchayat Samiti Act read with Section 22 of the Orissa General Clauses Act. Hence we see no invalidity in the order of the Sub-Divisional Officer.

This application is accordingly dismissed with Costs.

R.K. Das, J.

6. I agree.