

(1985) 08 OHC CK 0029
In the Orissa High Court
Case No : O.J.C. No. 1288 of 1985

Jagadish Pradhan and Others

APPELLANT

Vs

Kapileswar Pradhan and Others

RESPONDENT

Date of Decision : 27-08-1985

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa Panchayat Samiti Act, 1959 — Section 46B, 46B(1), 46B(2), 54A, 57
Orissa Panchayat Samiti Rules — Rule 3, 4, 5

Citation : (1985) 60 CLT 410

Hon'ble Judges : D. Pathak, C.J; S.C. Mohapatra, J

Bench : Division Bench

Advocate : R. Mohanty, Pradipta Mohanty and A.C. Mohanty, for the Appellant; K.N. Jena, A.K. Mohapatra and S. Mohapatra for O.P. 1 and R.K. Patra, Additional Government Advocate for O.Ps. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

S.C. Mohapatra, J.—In this application under Articles 226 and 227 of the Constitution of India, the Petitioners pray to quash the order of the State Government u/s 54-A of the Orissa Panchayat Samiti Act, 1959 (hereinafter referred to as "the Act").

2. The opposite party No. 1 was elected as the Chairman of the Jujnmura Panchayat Samiti. On 24-3-1985, the Petitioners and one Surendra Prasad Nayak resolved expressing their want of confidence on the Chairman (opposite party No. 1) and requested the Subdivisional Officer, in the said resolution to take necessary action in the matter. The Vice-Chairman (Petitioner No. 1) sent the said resolution on 27-3-1985 to the Subdivisional Officer. On receipt of the same the Subdivisional Officer gave notice on 3-4-1985 for a meeting to be held at the office of the Panchayat Samiti on 15-4-1985 at 11 a.m. with a copy of the resolution dated 24-3-1985 indicating the subject of the notice to be a special sitting of the Samiti relating to the proposal of vote of no confidence against the

Chairman. In the meeting held on 15-4-1985, a resolution recording want of confidence in the Chairman (opposite party No. 1) was passed. The Collector, Sambalpur on receipt of the resolution forthwith published the same on 17-4-1985. Accordingly opposite party No. 1 was deemed to have vacated the office.

3. Opposite Party No. 1 filed an application u/s 54-A of the Act on 20-4-1985 before the State Government for exercising the power of revision of the resolution dated 15-4-1985. After hearing the opposite party No. 1 and the Petitioners, the State Government allowed the application of opposite party No. 1 by order dated 21-6-1985 and quashed the resolution dated 15-4-1985. Aggrieved by the aforesaid order, the Petitioners have approached this Court for issue of a writ in the nature of certiorari quashing the order dated 21-6-1985.

4. The revisional authority quashed the resolution on the grounds that the requisition to the Subdivisional Officer was not in accordance with law and in the absence of a seal in the notice given by the Subdivisional Officer, the opposite party No. 1 was misled and could not attend the meeting.

5. Section 46-B(2) of the Act provides for the procedure to be followed for passing a vote of no confidence by the members of the Panchayat Samiti. It does not provide for any proforma. Section 57 of the Act provides for making rules consistent with the provisions of the Act to carryall or any of the purposes of this Act and to prescribe forms for any matter for which they consider that a form should be provided. In exercise of this power, the State Government made a set of rules relating to removal of Chairman and Vice. Chairman from office. In Rule 3 the Collector was declared to be the authority to publish the resolution u/s 46-B(1) of the Act. The manner of publication of the resolution by the Collector has been provided under Rules 4 and 5. The State Government did not consider that a form would be necessary for the requisition to be sent to the Subdivisional Officer or for the proposed resolution along with such requisition or for the notice by the Subdivisional Officer. In the absence of rules or forms prescribed for the purpose, the requirement of Section 46-B(2) of the Act would be satisfied if they are substantially complied with.

6. The revisional authority has treated the forwarding letter of the Vice-Chairman dated 27-3-1985 to be the requisition and held it to be invalid in law as required number of members have not signed the same. This is clearly an error of law apparent on the face of the record. The resolution of the eleven members in their meeting is the requisition. The word "requisition" has not been defined either under the Act or under the Orissa General Clauses Act, 1937. Accordingly, the ordinary meaning in the context is to be accepted. The meaning of the word in the Concise Oxford Dictionary, Fifth Reprinted Edition, 1968, is

Requiring, demand made esp. formal use. Written demand that some duty should be performed....

In the Chamber's Twentieth Century Dictionary revised edition with supplement

in latest impression, 1961 is-

the act of requiring, a formal demand or request; a formal call for the doing something that is due....

Thus in the context of Section 46-B(2), it would mean a written request to the Subdivisional Officer demanding his performance of his duty entrusted on him by the legislature u/s 46-B. The clear language of the resolution of the eleven signatories, i.e., the Petitioners and one Surendra Prasad Nayak is, "SAMBALPUR SADAR ANUBIBHAGIYA ADHIKARINKU BIHITA KARYANUSTHANA KARIBA PAAIN ANURODHA KARAGALA". The English rendering is that the Subdivisional Officer, Sadar, Sambalpur is requested to take necessary action in the matter." Thus, the requirement that the requisition to be signed by required number of members and addressed to the Subdivisional Officer has been satisfied. The revisional authority should have treated the resolution dated 24-3-1985 to be the requisition.

7. The revisional authority has held that the mandatory provision that no meeting shall be convened except on a requisition along with a copy of the resolution proposed to be moved, has not been complied with as a copy of the resolution proposed to be moved at the meeting in which a vote of no confidence has to be passed was not appended. True it is that Section 46-B(2) requires a copy of the resolution proposed to be moved at the meeting to be along with the requisition. In the resolution dated 2-3-1985 the proposal was clearly mentioned to be the absence of confidence of the signatories on the Chairman. Merely because the proposal is not in a separate document, it cannot be said that the action thereupon becomes illegal. There is no form prescribed for such a proposed resolution. The authority i.e., the Subdivisional Officer well understood the intention behind the resolution and rightly treated the same to be in compliance of the requirement of Section 46-B(2). The finding of the revisional authority that the mandatory provision has not been complied is thus an error of law apparent on the face of the record.

8. The revisional authority held that on account of absence of a seal of the Subdivisional Officer on the notice dated 3-4-1985, the Petitioner was misled as he was not acquainted with the signature of the Subdivisional Officer. There is no dispute that the Subdivisional Officer issued the notice. It is not disputed that opposite party No. 1 received the notice. When Section 46-B does not require the putting of seal to the notice and the State Government while making rules did not think that such a requirement is necessary to be complied with, the Petitioner ought not to have been permitted to raise such a plea. The members to whom the notice was issued understood that the Sub-divisional Officer issued the notice and on that basis attended the meeting. Thus the revisional authority having required compliance of something which is not envisaged under the law, has committed an error of law apparent on the face of the record.

9. All the reasons given by the revisional authority having failed the order dated

21-6-1985 (Annexure-5) passed u/s 54-A of the Act is quashed. The writ application is accordingly allowed. No costs.

D. Pathak, C.J.

10. I agree.