

(2001) 05 OHC CK 0027
In the Orissa High Court
Case No : O.J.C. No. 13099 of 2000

K. Pramila Patnaik and another

APPELLANT

Vs

State of Orissa and others

RESPONDENT

Date of Decision : 18-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 243U
Orissa Municipal Act, 1950 — Section 401, 401(1), 401(2)

Citation : AIR 2001 Ori 190 : (2001) 92 CLT 373 : (2001) 2 OLR 87

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : M/s Pitambar Acharya and S.R. Pati, for the Appellant; A.G.A., for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—This writ application has been filed by the Chairperson of Nabarangpur Municipality and on elected] Councillor of the said Municipality challenging the action of the State Government in dissolving the Nabarangpur Municipality in exercise of power u/s 401(1) of the Orissa Municipal ; Act and consequently appointing the Collector & District Magistrate as the Administrator of the Municipality. The notification relating to dissolution has not been filed by the petitioners. However, opposite parties in their counter have filed a copy of the notification as Annexure-D/3.

2. The petitioners have contended that the order regarding dissolution is actuated by mala fides and has been passed without properly considering the nature of allegations and the reply submitted by the petitioners and other Councillors. Subsequently, further affidavit has been filed by the petitioners stating that the impugned order has been passed by the State Government without giving opportunity of hearing to the Municipality as required under Article 243U of the Constitution of India. Since such an additional affidavit had been filed on behalf of the petitioners, opportunity was given to the opposite parties to

file further affidavit. In the further affidavit filed on behalf the State, it has been indicated that opportunity to show cause has been given, as contemplated u/s 401(2) of the Orissa Municipal Act.

3. The learned counsel appearing for the petitioners has relied upon several decisions of the. Supreme Court and of this Court such as Fedco (P) Ltd. and Another Vs. S.N. Bilgrami and Others, ; Swadeshi Cotton Mills Vs. Union of India (UOI), ; Sri Rama Chandra Khera and Others Vs. State of Orissa and Others, and contended that Municipality being an elected body, the extreme action of dissolution of such Municipality, a democratically elected body, should not have been taken merely for the asking and some reasonable constraints should have been shown before taking such drastic action. It has been also vehemently contended that since the Chairperson and the majority of Councillors belong to the rival political party, illegal action has been taken at the behest of the ruling party.

4. A perusal of the aforesaid decisions clearly emphasizes the restraint which should be exercised before taking such drastic action. The allegation that the impugned action has been taken because of political rivalry has been denied. However, it is unnecessary to deal with those contentions of the learned counsel appearing for the petitioners in view of the fact that the impugned order passed by the State Government cannot be sustained on account of non-compliance with the provisions contained in Article 243U of the Constitution. The provisions contained in Article 243U are quoted hereunder :

" 243U. Duration of Municipalities, etc.

(1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level which is functioning immediately before such amendment, till the expiration of its duration specified in Clause (1).

(3) An election to constitute a Municipality shall be completed-

(a) before the expiry of its duration of specified in Clause (1) ;

(b) before the expiration of a period of six months from the date of its dissolution ;

Provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such period.

(4) A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued under Clause (1) had it not been so dissolved."

A perusal of the aforesaid constitutional provision which was incorporated by way of amendment makes it clear that opportunity of being heard should be given before a Municipality is dissolved before its normal tenure. In the present case, it has been specifically asserted that no such opportunity had been given. In the additional counter affidavit filed on behalf of the opposite parties, it has not been indicated that such opportunity of personal hearing has been given. On the other hand, the opposite parties have stated that opportunity to show cause, as contemplated in section 401(2) of the Orissa Municipal Act, which is quoted hereunder, had been given :--

"401. Dissolution and reconstitution of Municipality :--

(1) If in the opinion of the State Government a Municipality is incompetent to perform or persistently makes default in performing the duties imposed on it by law or exceeds or abuses its powers, they may, by notification published in the prescribed manner, direct that the Municipality be dissolved.

(2) Before publishing a notification under subsection (1), the State Government shall communicate to the Municipality the grounds on which they proposed to do so, fix a reasonable period for the Municipality to show cause against the proposal and consider the explanations and objections, if any, of the Municipality.

(3) On and with effect from the date of publication of such notification, all the Councillors including the Chairperson and Vice-Chairperson of the Municipality shall be deemed to have vacated their office as such and the election to constitute the Municipality in accordance with the provisions of this Act shall be completed before the expiration of a period of six months from the said date :

Provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this sub-section for constituting the Municipality for such period.

(4) The Councillors including the Chairperson and Vice-Chairperson of the Municipality constituted on such dissolution shall continue only for the remainder of the period for which the Councillors including the Chairperson and Vice-Chairperson of the dissolved Municipality would have continued had there been no such dissolution.

(5) During the interval between the dissolution of a Municipality and the reconstitution thereof, all or any of the powers and duties of the Municipality and its Chairperson may be exercised and discharged, as far as may be, and subject to such extent, as the State Government may determine, by a person to be appointed by the State Government as the Administrator, and the Administrator

so appointed may, if the State Government so direct, receive such payment for his services from the Municipal Fund as may be determined by them."

It has been contended by the counsel for the opposite parties that in view of the provision under the Orissa Municipal Act, only opportunity to show cause is required to be given and such provision does not contemplate giving of any opportunity of being heard in the matter. Even though section 401 of the Orissa Municipal Act does not specifically envisage giving opportunity of being heard, in view of the subsequent amendment of the Constitution incorporating Article 243U, the provision contained in, the Municipal Act should be read in consonance with the provision contained in the Constitution. Since admittedly, no opportunity of being heard had been given, the impugned order passed by the State Government under Annexure-D/3 and the consequential action under Annexure-3 cannot be sustained and are hereby quashed and the elected Council should be allowed to function forthwith.

5. The writ application is accordingly allowed. There will, however, be no order as to costs.

6. Writ application allowed.