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**(2000) 07 OHC CK 0005**  
**In the Orissa High Court**  
**Case No : O.J.C. No. 5022 of 2000**

Kishore Chandra Sahoo

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

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**Date of Decision :** 14-07-2000

**Acts Referred:**

Orissa Panchayat Samiti Act, 1959 — Section 16, 16(1), 18(3), 46(2)B, 46(B)

**Citation :** (2000) 90 CLT 279

**Hon'ble Judges :** P. Ray, J

**Bench :** Single Bench

**Advocate :** Pitambar Acharya, A. Patnaik and S.R. Pati, for the Appellant; J.K. Mishra (2) Intervenor and A.S.C., for the Respondent

**Final Decision :** Allowed

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## Judgement

P. Ray, J.—On receipt of a requisition from required number of members of Chandbali Panchayat Samiti in the district of Bhadrak to specially convene a meeting of the Panchayat Samiti to consider a motion of non-confidence against the present Petitioner, who is the Chairman of the said Panchayat Samiti, the Sub- Collector, Bhadrak convened a meeting on June 7, 2000 for the purpose. Admittedly, notices of the said meeting were sent only to the directly elected members of the Panchayat Samiti. The present Petitioner has filed this writ application questioning the legality of the said proposed specially meeting on the ground that notices of such meeting are to be sent to all the members of the Panchayat Samiti as specified in Sub-section (1) of Section 16 of the Orissa Panchayat Samiti Act, 1959 (hereinafter referred to as "the Act").

2. This writ application was moved on June 2, 2000 before the Vacation Bench. The Hon'ble Vacation Judge granted an interim stay of the notice dated May 27, 2000, being Annexure-1 to the writ application. Because of the interim order the meeting could not be held and the impugned notice has already become ineffective.

3. Mr. Misra, learned Addl. Standing Counsel states on instruction that the Sub-Collector, Bhadrak committed mistake in sending notices to the directly elected members only and that all the members of the Panchayat Samiti as specified in Section 16 of the Act are entitled to notice of the said requisition meeting.

4. The added opp. parties 6 to 26 have filed a counter contending that only the directly elected members of the Panchayat Samiti are entitled to notice. The said contention is totally misconceived and it appears that the said added opp. parties are not aware of the amended provisions of Section 18(3) of the Act. The relevant provisions of Section 16(1), Section 18(3) and Section 46B are reproduced below:

**S. 16. Constitution of the Panchayat Samiti -**

1. Every block shall have a Samiti consisting of the following members, namely;

(a) the Chairman and the Vice-Chairman of the Samiti elected in the manner provided in Sub-section (3);

(b) one member elected directly on the basis of adult suffrage from every constituency within the Block in the prescribed manner;

(c) Sarpanches of the Grama Panchayats situated within the block;

(d) every member of the House of the People and the Legislative Assembly representation constituencies which comprise wholly or partly the area of the Samiti; and

(e) every member of the Council of States who is registered as an elector within the area of the Samiti;

**S. 18. Conduct of business of the Samiti-**

1. x x x

2. x x x

3. All the members of the Samiti specified in Sub -section (1) of Section 16 shall have the right to vote at the meetings of the Samiti.

**Section 46B. Vote of no confidence against Chair-man and Vice-Chairman of Samiti-**

1. Where at a meeting of the Samiti specially convened in that behalf a resolution is passed, supported by a majority of (not less than two-thirds of) the total number of members having a right to vote, recording want of confidence in the Chair- man or Vice-Chairman of such Samiti the resolution shall forth-with be published by such authority and in such manner as may be prescribed and with effect from the date of such triplication the Chairman or Vice-Chair- man, as the case may be, shall be deemed to have vacated office.

2.

(a)

(b) x x x x x x

(c) (the Sub-divisional Officer) on receipt of such requisition shall fix the date, hour, and place of such meetings and give notice of the same to all the members with a right to vote, along with a copy of the requisition and of the proposed resolution, at least seven clear days before the date so fixed;

From the above provisions of the Act there cannot be any doubt that all the members as enumerated under different clauses of Section 16(1) of the Act comprises the Panchayat Samiti and all the said members have right to vote at the meetings of the Samiti. A meeting convened for the purpose of considering a motion of no confidence against Chairman or Vice-Chairman of the Panchayat Samiti is a specially convened meeting for the Panchayat Samiti. A motion of no confidence is passed only if not less than 2/3rd of the total number of members having right to vote record want of confidence in the Chairman or Vice-Chairman. Section 46B(2)(c) clearly postulates that the Sub-divisional-Officer is to give notice of such specially convened meetings to all the members of the Panchayat Samiti with a right to vote. There cannot be any doubt that all the members of the Panchayat Samiti as enumerated in Section 16(1) of the Act are entitled to receive notice of the meeting.

5. The learned Advocate for the added opp. parties has referred to the provisions of the Orissa Panchayat Samiti Election Rules to submit that only the directly elected persons are members of the Samiti. Such submission is wholly misconceived. The Orissa Panchayat Samiti Rules (sic) are rules to regulate the election to the Panchayat Samities in the State. The said Rules deal with only the elected members of the Samiti and those rules do not have any manner of application to holding of meetings of the constituted Panchayat Samiti.

6. Accordingly, this writ application is allowed. If the Sub-Collector, Bhadrak wants to convene a special meeting for considering the motion of no confidence against the Chairman of Chandbali Panchayat Samiti, he will issue a fresh notice in accordance with law to all the members of Panchayat Samiti as enumerated in Section 16(1) of the Act.

Writ application allowed.