
(2014) 09 OHC CK 0022
In the Orissa High Court
Case No : W.A. No. 304 of 2014

Manaswini Baliarsingh

APPELLANT

Vs

State of Odisha

RESPONDENT

Date of Decision : 24-09-2014

Acts Referred:

Constitution of India, 1950 — Article 227, 243E, 85
Orissa Panchayat Samiti Act, 1959 — Section 46(B)(2)(f-3), 46B, 54A, 58

Citation : (2014) 118 CLT 1146 : (2014) 2 OLR 1094 Suppl. : (2014) 2 OLR 1094

Hon'ble Judges : Amitava Roy, C.J;B.R. Sarangi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dr. B.R. Sarangi, J.—The petitioner in W.P.(C) No. 10475 of 2014 being the appellant has filed this appeal challenging the judgment dated 27.08.2014 passed by the learned Single Judge dismissing the writ petition and directing to declare the result of "No Confidence Motion".

2. The factual matrix of the case in hand is that the appellant being the petitioner filed the writ petition challenging the notice dated 28.4.2014 issued by the Sub-Collector, Puri inter alia to convene a special meeting of the Panchayat Samiti on 07.06.2014 for recording vote of "No Confidence" against her on the ground that the same was illegal, arbitrary and violative of the provisions enshrined in Article 243E of the Constitution of India, transgressing the provisions contained in Section 46B of the Orissa Panchayat Samiti Act, 1959,(hereinafter to be referred to as "the Act") read with Rules 8 and 9 of the Panchayat Samiti (Conduct of Business) Rules, 1969 and above all was violative of the circular of the State Government in the Department of Panchayati Raj bearing No. 31535 dated 30.9.2009.

The writ petitioner was elected as Chairman of Panchayat Samiti, Kanas Block pursuant to the general Panchayat Election held in the year 2012. The tenure of the election being five years, the term would expire in the year 2017. While he

was continuing in office, a vote of "No Confidence Motion" was initiated by some of the members of the Panchayat Samiti holding a meeting on 23.5.2014. Accordingly, requisition was placed on 27.5.2014 basing upon which the impugned notification was issued on 28.5.2014 for convening a special meeting to hold "No Confidence Motion" on 7.6.2014 against the Chairman, Panchayat Samiti, Kanas Block, the writ petitioner, appellant herein. Immediately two days thereafter, i.e. on 30.5.2014, His Excellency the President of India in exercise of the power conferred upon Clause-1 of Article 85 of the Constitution of India summoned the Lok Sabha to meet at New Delhi on Wednesday, the 4th June, 2014 at 11 a.m., which continued till 11th June, 2014.

3. Mr. P. Acharya, learned Senior Counsel for the writ petitioner, appellant herein, raised a contention before the learned Single Judge that in view of the notification No. PRI-I-(Admn.) 53/09/31535/PR dated 30.09.2009 the Sub-Collector could not have convened a special meeting to hold the "No Confidence Motion" on 07.06.2014 when the Parliament Session was continuing and thus, the same was in violation of the said Notification. He further urged that before holding such "No Confidence Motion" the provisions contemplated u/s 46(B)(2) (f-3) of the Act had to be followed in letter and spirit. Therefore, the entire proceeding was vitiated due to non-compliance with the principles of natural justice, more so being contrary to the provisions governing the field. Referring to the additional affidavit filed on behalf of the petitioner on 02.09.2014 to which the writ petitioner had enclosed a copy of the letter dated 02.06.2014 obtained under the Right to Information Act Mr. Acharya submitted that the writ petitioner made a request to the Sub-Collector, Puri to defer the date of meeting for "No Confidence Motion" which was to be held on 07.06.2014 in view of the Government Circular dated 30.09.2009. He further urged that the petitioner had not been given an opportunity to defend her own case, thereby the principles of natural justice were violated and also there was non-compliance with the provisions contained u/s 46(B)(2)(f-3) of the Act. According to Mr. Acharya, the aforesaid contentions having not been considered by the learned Single Judge, the impugned judgment in Annexure-4 was vitiated. To substantiate his contention, he has relied upon the judgments in AIR 1936 253 (Privy Council) , State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, Gudur Kishan Rao and Others Vs. Sutirtha Bhattacharya and Others, Smt. Kanti Kumbhar Vs. State of Orissa and Another, Sri Balmiki Pradhan Vs. State of Orissa and Others,

4. Mr. R.K. Mohapatra, learned Government Advocate strenuously urged that the finding of the learned Single Judge is wholly justified and therefore, the same should not be interfered with in this appeal. He has emphatically submitted with reference to Annexure-1, the notification issued by the P.R. Department dated 30.9.2009 that before issuing the impugned notification by the Sub-Collector on 28.5.2014 vide Annexure-3, to convene a special meeting to hold "No Confidence Motion" on 7.6.2014, the summon issued by His Excellency the President of India in Annexure-2 had not seen the light of the day. Rather, such summon was issued two days after the impugned notification was issued in Annexure-3 dated

28.5.2014, i.e. on 30.5.2014, more so, 7.6.2014 being a Saturday, an off day of the Parliament, in the event the vote of "No Confidence Motion" was held, it would not cause any prejudice to anybody and at the same time, it is stated that on 7.6.2014 the local Member of Parliament had also participated in the vote of "No Confidence Motion" and therefore, the reliance placed on Annexure-1, the Government circular dated 30.9.2009 not to hold "No Confidence Motion" on 7.6.2014, was of no consequence.

5. With the above pleaded facts, it appears that notice of "No Confidence Motion" was issued by the Sub-Collector on 28.05.2014 (Annexure-3 to the appeal memo) and by that time though such notification was issued, the Presidential summon was not issued, rather the document in Annexure-3 indicates that the Presidential summon was issued only on 30.05.2014 in which the Secretary General of the Parliament had issued an order requesting all the Lok Sabha Members to attend the meeting of first Session of sixteenth Lok Sabha, which was to be held from 4th June, 2014 to 11th June, 2014, (Wednesday) and in between, 7th and 8th June, 2014 were the off days of Lok Sabha on account of Saturday and Sunday. Nothing has been placed before this Court to indicate that Presidential Notification was ever brought to the notice of the Sub-Collector. Therefore, the learned Single Judge while considering the case on merits on the basis of the materials available on record categorically held in paragraph-8 that had this fact been brought to his notice then the appreciation would have been different. But during pendency of this appeal, by filing an additional affidavit on 02.09.2014 the writ petitioner produced a letter addressed to the Sub-Collector, Puri on 02.06.2014, which, it is stated, she obtained under the Right to Information Act, for consideration. It is stated that in view of the Government Circular dated 30.09.2009 when the Parliament is in seisin, no meeting would have been convened by the Panchayat Samiti and therefore, the impugned notification issued vide Annexure-3 is vitiated. It is stated that such Circular has been issued u/s 58 of the Act, and therefore, it has got statutory force and when action has been taken contrary to the statutory provision, the learned Single Judge would not have come to such conclusion contrary to the statutory provision. But this fact was not pleaded before the learned Single Judge while adjudicating the case. This is rather a subsequent development which has been brought to the notice of this Court in appeal. When this question was confronted to Mr. Acharya, he admitted the fact that those documents were not produced before the learned Single Judge for adjudication. Therefore, this Court is of the considered opinion that at the appellate stage on the basis of new materials, no adjudication can be made. It is also fairly admitted that the writ petitioner had participated in the "No Confidence Motion", which was held on 07.06.2014 and having so participated he could not have turned around and challenged the same either in the writ petition nor can he do so in the present appeal. Such attempt of the writ petitioner is absolutely a misconceived one.

6. Mr. P. Acharya, learned Senior Counsel relying upon the provisions of Section 46(B)(2)(f-3) of the Act, strenuously urged that no opportunity was given to the

writ petitioner before the "No Confidence Motion" was held on 07.06.2014, thereby any action pursuant to that is vitiated for non-compliance with the statutory provisions.

7. With reference to the aforesaid contention a query was made by this Court whether in the writ petition such a plea was taken or not. On perusal of the records and considering the admission made by Mr. P. Acharya, it reveals that no such pleading was advanced before the learned Single Judge. Therefore, there was no occasion on the part of the learned Single Judge to deal with such aspect. This Court therefore refrains from given any finding on that score because such contention was neither pleaded before the learned Single Judge nor done so in the present proceeding. It is further pleaded that the respondent-opposite party did not file any counter to the writ petition and, therefore, the learned Single Judge could not have proceeded with the matter in absence of any counter filed by the State justifying the Circular issued by the Government dated 30.09.2009. Even if no counter is filed since pure question of law was involved for interpretation and consideration, in absence of any counter filed, the learned Single Judge proceeded on the basis of the materials available on record and categorically stated that while issuing the impugned notification fixing the date of recording "No Confidence Motion" during Parliament session, the Sub-Collector had no scope to know about the date of session of the Parliament as by the said date the impugned notification vide Annexure-3 had been issued. Even otherwise, if the Parliament Session was continuing, 7th June, 2014 being the off day of the Lok Sabha, the Hon"ble Member of the Parliament, Mr. Pinaki Mishra attended the meeting and participated in the same. Therefore, no infirmity otherwise is evident in the impugned notification, Annexure-3 and the effect of the Circular, Annexure-1 cannot stand in the way if otherwise it has not affected the procedure itself. In this background, it can be concluded that by the time Annexure-3 was issued, the Parliament Summon, Annexure-2, had not been notified. Therefore, the Circular, Annexure-1, has no relevance to the present context. Accordingly the contention to this effect is negated.

8. In course of hearing the minutes of the meeting held on 07.06.2014 were brought to the notice of this Court from which it appears that the writ petitioner had participated in the meeting and had signed the resolution. Therefore, having participated in the entire proceedings of the meeting for vote of "No Confidence Motion" she cannot turn around and say that the proceeding was vitiated, which was forbidden under law. So far as non-compliance with the principles of natural justice is concerned, the same was never pleaded before the learned Single Judge. Similarly, non-compliance with the provisions of Section 46(B)(2)(f-3) of the Act was never raised before the learned Single Judge and, therefore, there was no occasion on the part of the learned Single Judge to discuss the same in the impugned judgment.

9. With regard to the judgments, relied upon by Mr. P. Acharya, the same state well settled principles of law laid down by this Court as well as Apex Court and

there is no dispute. But the applicability thereof has to be considered in the present context. It can only be said that the applicability of any law has to be adjudged taking into account the facts of each case.

10. It was strenuously urged that on behalf of Mr. R.K. Mohapatra, learned Government Advocate that u/s 54A of the Act, there is availability of alternative remedy and without availing of the same, the writ petitioner could not have invoked the jurisdiction under Article 227 of the Constitution of India. This question does not arise in this appeal the same having not been pleaded before the learned Single Judge. This Court is only to consider whether the judgment of the learned Single Judge is justified or not.

11. In view of the contention raised and finding arrived at by the learned Single Judge, this Court does not find any infirmity in the impugned judgment warranting interference in this appeal.

12. The Writ Appeal fails and the same is accordingly dismissed. No order as to costs.