

(2015) 09 OHC CK 0012
In the Orissa High Court
Case No : W.P. (C) No. 15205 of 2014

Manorama Das

APPELLANT

Vs

Collector-cum-District Magistrate, Balasore and Others

RESPONDENT

Date of Decision : 25-09-2015

Acts Referred:

Orissa Grama Panchayat Act, 1964 — Section 24, 24(2)(c), 24(2)(c)(d), 24(2)(d)

Citation : (2015) 09 OHC CK 0012

Hon'ble Judges : C.R. Dash, J.

Bench : Single Bench

Advocate : Ganeswar Satpathy and B.P. Satpathy, for the Appellant

Final Decision : Dismissed

Judgement

C.R. Dash, J.—The petitioner, who is the elected Sarpanch of Andrai Grama Panchayat in the district of Balasore, has challenged, in this writ application, the notice dated 08.08.2014 (Annexure-9) issued by the Sub-Collector, Balasore-opposite party No. 2 calling upon the petitioner to attend the meeting of "No Confidence Motion" to be held on 26.08.2014 at 11 A.M. in the office of the Andrai Grama Panchayat.

2. The present petitioner was elected as Sarpanch in the year 2012. While she was acting as such, 11 out of 15 Ward Members including the Naib-Sarpanch passed a resolution on 27.06.2014 to table a "No Confidence Motion" against the petitioner and sent the resolution along with the requisition to the Sub-Collector, Balasore-opposite party No. 2. The Sub-Collector, Balasore, after due processing and verification of the signatures of the Ward Members, issued notice vide Notice No. 308 dated 08.08.2014 fixing the date of "No Confidence Motion" to 26.08.2014.

3. It is alleged by the petitioner that the aforesaid notice vide Annexure-9 was not issued through Post by Certificate of Posting and was served on her by the Executive Officer, Andrai Grama Panchayat-opposite party No. 5 on 12.08.2014.

The notice having not been issued by the Post through Certificate of Posting and there being no gap of clear 15 days between receipt of notice by the petitioner and the date of the meeting, there is violation of Section 24(2)(c)(d) of the Orissa Grama Panchayat Act (for short, "the Act") and the notice vide Annexure-9, therefore, be quashed. It is further alleged that along with the notice, copy of the requisition having not been supplied to the petitioner, the notice is also bad in law.

4. The opposite party No. 3 has filed counter affidavit on behalf of the opposite parties 1 and 2. In paragraph-10 of the counter affidavit, it is specifically averred that the notice vide Annexure-9 has been issued by the opposite party No. 2 on 08.08.2014 fixing the date of meeting of "No Confidence Motion" to 26.08.2014 and there is gap of clear 15 days between the date of issuance of notice and the date of the meeting. It is admitted that the notice has been served on all the members including the petitioner through the Executive Officer, Andrai Grama Panchayat?opposite party No. 5 on 12.08.2014. It is further averred in paragraph-11 of the counter affidavit that along with the Notice No. 308 dated 08.08.2014, copy of the requisition and the proposed resolution have been duly served on all the members of the Andrai Grama Panchayat including the petitioner and there is mention about such fact in the notice vide Annexure-9 itself.

The interveners-opposite parties 6 to 15 have also filed their counter affidavit supporting the plea of the opposite party No. 2. It has been specifically averred by the aforesaid opposite parties that vide GSR. 58(E), dated the 31st January, 2011, Indian Post Office Rules, 1933 has been amended by omitting the heading "Certificate of Posting". In view of such amendment, Certificate of Posting is no more available to be availed by any person.

5. From the narration of facts (supra), it is clear that the "No Confidence Motion" was fixed to be held on 26.08.2014 and the notice vide Annexure-9 was issued and signed on 08.08.2014, which was served on the petitioner and other Ward Members on 12.08.2014. This Court, in the case of Smt. Heeramani Munda Vs. The Collector and Others, and in the case of Nilambar Majhi Vs. Secretary to Govt. of Orissa, Panchayat Raj Deptt. and Others, , have held that there should be 15 clear days notice as contemplated under Section 24(2)(c) of the Orissa Grama Panchayat Act excluding the date of issuance of notice and the date of meeting fixed for "No Confidence Motion".

6. In view of such provision and in view of the contentions raised by learned counsel for the petitioner, it is to be decided whether the date of issue of notice or the date of receipt of the notice is to be taken as the relevant date to find out 15 clear days gap as contemplated in Section-24(2)(c) of the Orissa Grama Panchayat Act.

7. This Court, in the case of Sarat Padhi Vs. State of Orissa and Others, has held that "in the eye of law however "giving" is complete in many matters where

it has been offered to a "person". It has further been clarified that "tendering of a notice in law therefore is giving a notice even though the person to whom it is tendered refused to accept it." In the said decision of Saroj Kumar Padhi, it was further held thus:-

"..... Therefore, all that is required is that the Sub-Divisional Officer on receipt of a requisition, after fixing the date, hour and place of the meeting, has to give notice of the same to all the members holding the office and that part is as a matter of course. But, whether the notice reaches the addressee is not of any consequence, unless of course, any prejudice on the failure of the service of the notice is writ large or established by bringing relevant facts on the record."

Referring to the case of Sarbeswar Satapathy, an unreported decision and other Supreme Court judgments on the meaning of "15 clear days", this Court in Sarat Padhi's case (supra) held that "15 days must intervene between the date of the notice and the date of meeting and, therefore, the terminal dates be excluded so as to provide 15 clear days in between."

8. From the aforesaid case law, it is clear that the date of issue of notice and the date of meeting are to be excluded and there should be gap of clear 15 days in between the date of issue of notice and the date of the proposed meeting.

9. In the present case, there is positive averment by the opposite party No. 2 in the counter affidavit to the effect that, requisition of 11 Ward Members of Andrai Grama Panchayat was received by him (O.P. No. 2) and after due processing, he fixed the date, hour and place of the meeting of no-confidence and issued notices to all the members on 08.08.2014. The notice was served through the Executive Officer of Andrai Grama Panchayat on 12.08.2014. The opposite parties 6 to 15 have taken a stand that the opposite party No. 5, being a subordinate of the petitioner, might have been influenced to delay the service of notice. Learned counsel for the petitioner, on the other hand, submits that the notice has been received by the opposite party No. 5 on 11.08.2014. It is common knowledge that in Government offices, after a letter is issued, the same is to be dispatched through ministerial process. There might have been some delay in dispatching the notice to opposite party No. 5, but for such delayed dispatch, no fault can be found with the Sub-Collector (O.P. No. 2), who has issued and signed the notice on 08.08.2014.

10. This Court, in the case of Sarat Padhi (supra) has taken into consideration the entire scheme of the notice contemplated under Section 24(2)(c) of the Act and has held thus:-

"The Scheme of the notice contemplated under Section 24(2)(c) may be divided into three parts:- (i) requirement of giving the notice, (ii) fixing the margin of time between the date of the notice and the date of the meeting and (iii) service of notice on the members. I am of the view, which is also conceded by the learned Advocate General that the first two parts, namely, the date of issue of the notice and the margin of clear 15 days between the date of the notice and

the date of meeting are mandatory. In other words, if there is any breach of these two conditions, then the meeting will be invalid without any question of prejudice. But the third condition, i.e., the mode of service or the failure by any member to receive the notice at all or allowing him less than 15 clear days before the date of the meeting, will not render the meeting invalid. This requirement is only directory. This is also based on a sound public policy as in that event any delinquent Sarpanch, or Naib-Sarpanch can frustrate the consideration of the resolution of no-confidence against him by tactfully delaying or avoiding the service of the notice on him and thus frustrate the holding of the meeting. The legislation has also accordingly taken care to provide in unequivocal terms a provision to obviate such contingencies by incorporating clause (e) to sub-section (2) of Section-24 ".

11. From the aforesaid observation of the Court in the aforesaid Full Bench decision, it is clear that date of notice is to be understood as date of issue of notice by the Sub-Collector. If, it is understood to be the date of service of the notice on the petitioner and other members, then it would be like rewriting the law and such an interpretation would give chance to crafty delinquent Sarpanches and Naib-Sarpanches to obviate resolution and the proposed meeting by delaying the ministerial process in the office of the Sub-Collector, over which none has any control.

12. Taking into consideration the aforesaid discussion, I am of the firm view that the date of issue of notice is to be understood as date of issue from the office of the Sub-Collector. If there is some delay in dispatch from the office of the Sub-Collector, the same shall not invalidate the meeting of no-confidence unless prejudice is writ large or shown to have occasioned so far as the petitioner is concerned. In the present case, however, there is no pleading to the effect that any prejudice has been caused to the petitioner by delayed receipt of the notice. There is clear 15 days in between the date of the meeting and the date of issue of the notice. In view of such fact, the contention raised by learned counsel for the petitioner must fail.

13. It is contended by learned counsel for the petitioner that requirement of Section-24(2)(d) has not been followed in the present case. The Full Bench in Sarat Padhi's case (supra) has clearly held that service of notice on the members is directory in nature. Further, it is found from Annexure-C/3 to the counter filed by the opposite parties 6 to 15 that, Rule-195 of the Indian Post Office Rules, 1933 on the issue of "Certificate of Posting" has already been omitted vide Notification GSR. 58 (E) dated the 31st January, 2011. There being such amendment in the Indian Post Office Rules, sending of notice by Post under Certificate of Posting has become an impossibility. A person cannot be expected to do something, which is impossible. The Sub-Collector could have resorted to send the notice through Post. But the requirement of service being directory in nature, service of notice through opposite party No. 5 cannot be held to have invalidated the meeting.

14. It is lastly contended that the notice vide Annexure-9 served on the petitioner is not accompanied with the copy of the requisition. Opposite party No. 2, in his counter affidavit, has specifically stated that the notice was accompanied with the requisition and the proposed resolution and such fact has been mentioned also in the notice vide Annexure-9. As submitted by learned counsel for the opposite parties 6 to 15, other members have also received the notice along with the requisition and the proposed resolution. In view of such fact, it is not believable that the notice served on the petitioner was short of the requisition.

15. Taking all the aforesaid facts into consideration, I do not find any merit in the writ application.

16. In the result, the writ application is dismissed. The result of "No Confidence Motion" kept in the sealed cover, be published forthwith and consequent action be taken in accordance with law.