
(1969) 04 OHC CK 0012
In the Orissa High Court
Case No : O.J.C. No. 376 of 1968

Moujiram Jain

APPELLANT

Vs

The State of Orissa and Others

RESPONDENT

Date of Decision : 28-04-1969

Acts Referred:

Orissa Municipal Act, 1950 — Section 48, 49, 52, 53(3), 54

Citation : (1969) 35 CLT 636

Hon'ble Judges : Barman, C.J.; Patra, J

Bench : Division Bench

Advocate : R. Mohanty, for the Appellant; M. Mohanty and B. Mohanty and A.G., for the Respondent

Final Decision : Dismissed

Judgement

Barman, C.J.—The Petitioner, until lately the Chairman of Kantabanji Notified Area Council—against, whom a no-confidence resolution was passed by the said Council at a meeting convened for the purpose of his removal and in whose place opposite party No. 4 Harikishan was elected as Chairman by a resolution passed at the said meeting—challenges the order of the State Government, dated May 7, 1968 by which they decided that the no-confidence resolution passed against the Petitioner at the said meeting is in order and that opposite party No. 4 Harikishan has been duly elected as Chairman of the Kantabanji Notified Area Council at the said meeting.

2. On October 16, 1967 there was a general election to the Kantabanji Notified Area Council. In due course, the Petitioner was elected Chairman of the Council on December 20, 1967. On March 23, 1968 there was a requisition for convening a meeting of the Council for the purpose of considering a vote of no-confidence against the Petitioner. Accordingly, the meeting was convened on April 1, 1968 at 8 A.M. At about 8/8-30 A.M. on the said date the Councillors asked for (a three-hour) an adjournment of the meeting which was then being presided over by the Petitioner as Chairman of the Notified Area Council, as required by Section 65 of

the Orissa Municipal Act (Orissa Act No. 23 of 1950). As there was quorum the Petitioner disallowed the demand for adjournment of the meeting. Thereupon a number of Councillors created an uproar and threatened to assault the Petitioner and some of the Councilors used vulgar and abusive language, as a result of which there was said to be a pandemonium. As a consequence of this the Petitioner had no alternative but to adjourn the meeting sine die. Thereafter the Petitioner, the Vice-Chairman and other Councillors left the hall as recorded in the Minutes Book maintained under the Orissa Municipal Act.

3. It is said that at about 12 noon on the same day (April, 1968) the Councillors then present at the meeting moved and passed a no-confidence resolution against the Petitioner and elected opposite party No. 4 Sri Harikishan as Chairman of the Council in the place of the Petitioner. At this meeting neither the Petitioner nor the Vice-Chairman was present. One of the Councillors Sri Narayan Guru was duly elected to preside at the said meeting after his name was duly proposed and seconded.

4. On April 3, 1968 the District Magistrate of Bolangir addressed a letter to opposite party No. 4 Sri Harikishan stating that the no-confidence resolution removing the Petitioner from the office of Chairman of the Notified Area Council was not valid in law and that consequently the election of opposite party No. 4 was also illegal and without jurisdiction; in the said communication the District Magistrate requested him to act in accordance with Section 64(2) of the Orissa Municipal Act and also passed an order that the opposite party No. 4 could not function as the Chairman of the Kantabanji Notified Area Council and that until steps were taken u/s 64(2) of the Act and the Petitioner validly removed by a vote of no-confidence the Petitioner was to continue as the duly elected Chairman of the Council.

5. On April 23, 1968 the Petitioner received a copy of a telegram from the Government calling upon the Collector of Bolangir for a report on the emergent meeting of the Notified Area Council held on April 1, 1968. Thereafter on May 7, 1968 the Government gave their decision that the no-confidence resolution passed against the Petitioner was in order and that, opposite party No. 4 was duly elected as Chairman of the Notified Area Council in place of the Petitioner who had been removed. It is this order of the Government which is now challenged by the Petitioner.

6. The main points urged on behalf of the Petitioner are, in substance, these. The meeting at 12 noon on April 1, 1968 was not a valid meeting as required by Section 64 of the Act. Under the said section, the power to call such a meeting vests in the Chairman, or, in his absence, in the Vice-Chairman. The 12 noon meeting is said to have not been called by either the Chairman or the Vice-Chairman and therefore it was invalid. It was further argued that there was a violation of Section 65 in that neither the Chairman nor the Vice-Chairman presided over the 12 noon meeting. Alternatively, it was submitted that assuming that the no-confidence motion passed against the Petitioner was valid in law,

even so the election of opposite party No. 4 : in his place as Chairman of Notified Area Council was invalid because the 12 noon meeting was not presided over by the Chairman or by the Vice-Chairman or by the District Magistrate or any other officer as may be authorised by him in that behalf as required by Section 49 of the Act.

7. These arguments lose their force in view of the prima facie position in law as applicable to the facts and circumstances of the present case, as discussed hereunder.

8. It is clear from the minutes of the meeting held on April, 1968 that at the meeting held at 8/8.30 A.M. on that day, there was disturbance resulting in pandemonium. The Chairman of the meeting had no power to adjourn the meeting sine die as he did. Section 06(5) provides that the President may suspend the meeting for a time to be named by him not sine die.

Therefore the purported adjournment of the meeting sine die was invalid in law; the meeting must be treated as continued. It cannot be said that the sitting at 12 noon on the same date was invalid. The meeting continued.

9. What happened at the 12 noon was the passing of the no-confidence resolution against the Petitioner whereupon he vacated the office of Chairman, and the election forthwith, at the same meeting, of opposite party No. 4 as Chairman in his place.

10. The point is : Who should have presided over the 12 noon meeting in the absence of both the Chairman and the Vice-Chairman? The relevant portion of the Act dealing with the election for filling up of casual vacancies as was applicable on the date of the meeting, viz. April 1, 1968, was Section 49 as it stood amended by Orissa Act 12 of 1953. The Petitioner's argument challenging the validity of the 12 noon meeting on the ground that it was not presided over by the Chairman or the Vice-Chairman, or by the District Magistrate or any officer authorised by him in this behalf, overlooks the fact that the subsequent amendment to the section by Orissa Act 16 of 1968 under which such meetings were to be presided over by the District Magistrate or by any other officer as may be authorised by him in this behalf, was not there on the date of the meeting, viz. April 1, 1968. In fact, Orissa Act 16 of 1968 did not come into force until July, 1968. Section 49 as it stood amended in 1953 by Orissa Act 12 of 1953, which was in force on April 1, 1968 the date of the meeting was this:

49(1) On the vacation of the office of Chairman, or Vice-Chairman, as the case may be, under Sections 48, 52, 53(3) and 54 the councillors present at the meeting shall forthwith elect one of their own member to be the Chairman or Vice-Chairman, as the case may be.

The Chairman, in the case of election of Vice-Chairman or the Vice-Chairman in the case of election Chairman, shall preside and if the Vice-Chairman is a candidate for the office of the Chairman, a councilor elected by the Council for

the purpose, who does not stand as a candidate for the office of the Chairman shall preside.

In the case of the election of both the Chairman and Vice-Chairman, occurring at a time, a councillor elected by the Council who does not stand as a candidate for the office of Chairman or Vice-Chairman, shall preside.

The person presiding at such meetings shall have the right to vote.

(2) If the councillors fail to elect a Chairman on vacation of such office u/s 48, the existing Chairman shall be deemed not to have vacated office till a new Chairman is elected.

11. According to the scheme of the section as it appears, on the vacation of the office of Chairman or Vice-Chairman the Councillors are to make the election "forthwith" at the same meeting. The word "forthwith" is not without significance. Who was to preside over such meeting? It was argued on behalf of the Petitioner that the provisions of Section 49 are mandatory in that such meetings are to be presided over in the manner as laid down in that section and not otherwise, that is to say the Chairman in case of election of Vice-Chairman; or the Vice-Chairman in case of election of Chairman and that a Councillor elected by the Council for the purpose can preside only if (a) the Vice-Chairman is a candidate for the office of Chairman or (b) in case of election of both Chairman and Vice-Chairman occurring at a time. The Petitioner's point is that this is not a case which can come within the provisions of Section 49 as none of the contingencies specified therein existed.

12. It was argued on behalf of the Petitioner that the provisions of Section 49 are mandatory, on the broad principle that if an affirmative statute directs a particular thing to be done in a certain way, that thing shall not, even if there be no negative words, be done in any other way. He relied on the rule as stated by Lord Roche in AIR 1936 253 (Privy Council) , that:

where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

13. This argument, however, though based on the well recognised rule, overlooks the substance of Section 49. According to the scheme of that section, on the vacation of the office of Chairman and Vice-Chairman, his successor is to be elected by the Councillors forthwith at the meeting; the section does not contemplate any gap of time between the vacation of the office of Chairman or Vice-Chairman as the case may be and the election of his successor. In fact, there is no scope for any gap of time where a vote of no-confidence is passed at a meeting and a successor is to be elected forthwith at the same meeting in the place of the person who vacates office caused by such vote of no-confidence. Here the position was that u/s 54 of the Act the vacation of the office of the Chairman held by the Petitioner was caused by the passing of the no-confidence

resolution against him at the meeting; the intention of the Legislature was that the successor should be elected "forthwith" at the same meeting. In this view of the matter, the requirements as to the manner in which the meeting is to be presided, whether by the Chairman or by the Vice. Chairman or by any Councillor according to the contingencies mentioned in Section 49 are, in our opinion, merely directory and could not have been intended to be mandatory.

14. This, our view, that the requirements of Section 49 - as to who should preside over the meeting-are director is supported by the well known rule that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially. In the case of a directory provision it is sufficient if its plain object is carried out. An enactment which is in form mandatory might in substance be directory. The use of the word "shall" is not conclusive of the matter. These and other rules are only aids for ascertaining the true intention of the legislature which is the determining factor, and the true intention of the legislature must ultimately depend on the context. The practical bearing of the distinction between a provision which is mandatory and one which is directory, is that while the mandatory provision must be strictly observed, in the case of a directory provision it is sufficient that it is substantially complied with. The tendency of the Courts towards technicality is to be deprecated; it is the substance that Counts and it must take precedence over mere form. Some of the rules are vital and go to the root of the matter ; these cannot be broken; others are only directory and their breach can be overlooked provided there is substantial compliance with them read as a whole and provided also no prejudice ensues; and when the legislature does not itself state which is which, it is for the judges to determine the matter and exercising a nice discrimination sort out one class from the other along broad-based common-sense lines Haribandhu Satpathy Vs. Chandrasekhar Surendra Singh and Others, .

15. The position here is this. We have already found that the meeting held at 12 noon was a valid meeting and that the vote of no-confidence against the Chairman was validly passed. Section 49 requires inter alia that on the vacation of Chairman u/s 54 (which deals with vote of no-confidence against Chairman or Vice-Chairman) the Councillors present at the meeting shall forthwith elect one of their own number to be Chairman and this is exactly what the meeting proceeded to do. True it is that at such a meeting the Vice-Chairman should have presided as provided in Section 49. But the Vice-Chairman was absent having deliberately left the meeting earlier. The direction in Section 49 being that at the very meeting in which the vote of no-confidence is passed, the election of the Chairman should take place, the legislature could not have intended that the election should be postponed merely because the Vice Chairman is not available to preside over such meeting for purpose of electing the Chairman. We are therefore of the view that there has been in this case substantial compliance with the requirements of Section 49 regarding the proceedings for the Election of the Chairman in place of the Petitioner and that opposite party No. 4 has been validly elected as Chairman.

16. In this view that we have taken, on the facts and circumstances of the case and the law applicable to the same, it is unnecessary to deal with the other points raised on behalf of the parties.

17. In the result, therefore, the writ petition is dismissed but there will be no order as to costs.