
(2010) 07 OHC CK 0033

In the Orissa High Court

Case No : Writ Petition (C) No. 19065 of 2009

Muktamanjari Sahoo

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 08-07-2010

Acts Referred:

Orissa Grama Panchayat Act, 1964 — Section 24, 24(2), 26(3)
Orissa Panchayat Samiti Act, 1959 — Section 46B(2)

Citation : (2010) 110 CLT 645 : (2010) 2 OLR 473

Hon'ble Judges : R.N. Biswal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.N. Biswal, J.—The petitioner, who is the Sarpanch of Chhanagiri Grama Panchayat has filed this writ petition challenging the notice No. 4950 dated 3.12.2009 issued by the learned Sub-Collector, Khurda, fixing No Confidence Motion initiated against her to 21.12.2009, as well as the resolution dated 21.11.2009.

2. Election to the office of Sarpanch of Chhanagiri Grama Panchayat was held on 23.2.2007, wherein the petitioner was elected as the Sarpanch and opp. party Nos. 4,5 and 6 were elected as ward members of ward Nos. 4,6 and 7 respectively. There are 15 ward members in the aforesaid Grama Panchayat, out of whom 10 Ward Members passed a resolution on 21.11.2009 to bring No Confidence Motion against the petitioner on several grounds and sent the resolution along with a requisition to the Sub-Collector, Khurda. On receipt of the requisition, the learned Sub-Collector, Khurda vide notice No. 4950 dated 3.12.2009 fixed the meeting of No Confidence Motion to 21.12.2009.

3. According to the petitioner, some of the inhabitants of Chhanagiri G.P. had moved this Court in W.P.(C) No. 10825 of 2008 challenging the election of opp party No. 6 as ward member, on the ground that he was an agent of Life Insurance Company of India as well as Sahara India. This Court, vide order dated

4.8.2009, was pleased to direct the learned Collector, Khurda to dispose of the representation made by the writ petitioners in accordance with law as expeditiously as possible, still then, it is pending disposal. Opp. Parties 4 and 5 are also disqualified to continue as ward members of Chhanagiri G.P., since they had more than two children and the 3rd child of each of them, was born after the cut off date. The petitioner filed a petition vide G.P. election Misc. case No. 6 of 2009 before learned Collector Khurda to disqualify opp. party No. 4 to continue as ward member of Chhanagiri Grama Panchayat. Similarly the petitioner filed a petition before learned Collector, Khurda to disqualify opp. party No. 5 to continue as ward member.

4. Learned Counsel appearing for the petitioner submitted that when this Court in W.P.(C) No. 10825 of 2008 directed the learned Collector to dispose of the representation of the petitioners therein as expeditiously as possible, he ought not to have sit over the matter. He further submitted that before disposal of G.P. Election Misc. case No. 6 of 2009 and the representation of the petitioners in W.P. (C) No. 10825 of 2008, the learned Sub-Collector ought not to have issued the notice of No Confidence Motion. In support of his submission, he relied on the decisions in the case of Smt. Susila Sahani Vs. State of Orissa and Others, and Subash Ch. Sethy and Ors. v. State of Orissa and Ors. 77 (1994) C.L.T. 677. Learned Addl. Govt. Advocate, on the other hand, submitted that there was no illegality or impropriety in issuing notice of No Confidence Motion.

5. As per Section 26(3) of Orissa Grama Panchayat Act, where the Collector decides that the Sarpanch, Naib-Sarpanch or any other member has become disqualified, such decision shall be forthwith published by him in his notice board and with effect from the date of such publication, the Sarpanch, Naib-Sarpanch or such other member as the case may be, shall be deemed to have vacated office and till the date of such publication he shall be entitled to act as if he was not disqualified. Whatever may be the reason, in the present case, opp. party Nos. 4,5 and 6 have not yet been declared disqualified to hold their office. Hence, they are competent to sign in the resolution and requisition.

6. Moreover, there are 15 ward members under Chhanagiri Grama Panchayat. Out of them, 10 have signed on the requisition and the resolution including opp. party Nos. 4,5 and 6. As per Section 24 (2) (a) of the Orissa Grama Panchayat Act, minimum one third members are required to sign the requisition as well as the resolution to initiate No Confidence Motion against a Sarpanch. In the present case, out of 10 ward members, even if the signatures of three of them are not taking into consideration, still then, the remaining seven members being more than one third of the total members of the Grama Panchayat, it cannot be said that the requisition and the resolution were not made by one third of the ward members of the Grama Panchayat. Went through the decisions cited above. None of those decisions would be applicable to the present case.

7. Learned Counsel for the petitioner further submitted that as required u/s 24(2) (a) of the Orissa Grama Panchayat Act, no meeting of want of confidence

on the Sarpanch or Naib-sarpanch can be convened except on a requisition signed by at least 1/3 rd of the total numbers of the Grama Panchayat along with a copy of the resolution proposed to be moved at the meeting is sent to the Sub-Collector concerned. In the case at hand, since no resolution proposed to be moved in the meeting of No Confidence Motion was sent along with the requisition, the order under challenge deserves to be quashed. In support of his submission, he relied on the decision *Smt. Kamala Tiria v. State of Orissa and Ors.* 91 (2001) C.L.T. 151. As against this, learned Addl. Govt. Advocate contended that in the resolution passed for initiating no confidence motion, it is clear that the signatories intended to initiate No Confidence Motion against the petitioner. Only because the resolution to be moved at the time of holding the meeting of want of confidence on the petitioner was not sent to the Sub-Collector, the impugned orders cannot be rendered nugatory. In support of his submission, he relied on a decision of this Court in *Jagadish Pradhan and Ors. v. Kapileswar Pradhan and Ors.* 1987 (I) OLR 335.

In the decision *Kamala Tiria* (supra), a Division Bench of this Court, while dealing with Section 39(2) of the Zilla Parishad Act, 1991 which is *pari-materia* with Section 24(2) of the G.P. Act, held that a copy of the resolution proposed to be moved in the No Confidence Motion must be sent to the Revenue Divisional Commissioner concerned. Since no such resolution had been sent, the declaration of want of confidence on the President was held to be illegal. In the decision *Jagadish Pradhan and Ors.* (supra) a Division Bench of This Court while dealing with Section 46-B(2) of the Orissa Panchayat Samiti Act, which is *pari-materia* with Section 24 of the G.P. Act held that:

True it is that Section 46-B(2) required a copy of the resolution proposed to be moved at the meeting to be along with the requisition. In the resolution dated 24.3.1985 the proposal was clearly mentioned to be the absence of confidence of the signatories on the Chairman. Merely because the proposal is not in a separate document, it cannot be said that the action thereupon becomes illegal.

As per Section 24(2) of the Orissa Grama Panchayat Act, meeting of No Confidence cannot be convened except on a requisition signed by at least 1/3 rd of the total membership of the Grama Panchayat along with a copy of the resolution proposed to be moved at the meeting is sent to the Sub-Collector. The purpose being, there shall be discussion on the proposed resolution before casting of votes. Unless such a resolution is sent to the Sub-Collector, there is no scope for holding meeting. In the present case, no such resolution having been sent to the Sub-Collector, in view of the decision rendered in the case of *Smt. Kamala Tiria* (supra), the notice for holding No Confidence Motion deserves to be quashed.

8. Therefore, the writ petition is allowed and the notice No. 4950 dated 3.12.2009 issued by the learned Sub-Collector, Khurda fixing No Confidence Motion against the petitioner to 21.12.2009 is hereby quashed.