

(2010) 02 OHC CK 0011

In the Orissa High Court

Case No : Writ Petition (C) No's. 14559 and 16024 of 2009

Namitarani Pradhan

APPELLANT

Vs

State and Others
 Gunanidhi Dehury and Another Vs
Sub-Collector and Another

RESPONDENT

Date of Decision : 23-02-2010

Acts Referred:

Gram Panchayat Act, 1964 — Section 24(2), 25(2), 26(3)
Orissa Grama Panchayat Rules, 1968 — Rule 226
Orissa Zilla Parishad Act, 1999 — Section 39(2)

Citation : (2010) 1 ILR (Ori) 530 : (2011) 1 OLR 446 Supp

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.N. Biswal, J.—Since prayer in aforesaid two cases are one and the same, and the counsel engaged by the parties are the same, both the cases were heard analogously and the following common order is passed thereon.

2. As per the writ petition in W.P.(c) No. 14559 of 2009, Pokatunga Gram Panchayat consists of 15 wards. The Petitioner therein is the elected sarpanch of the said Gram Panchayat. Since ward member Bibekananda Sahu, (opp. party No. 6) did not attend three consecutive meetings of the Gram Panchayat, he ceased to be a member, and as such, vide letter dated 14.9.2009 it was communicated to the Sub-Collector, Angul to cancel his membership. In the same letter the Sub-Collector, Angul was also communicated to cancel the membership of Opp.parties 7 to 10 on different grounds. While the same was under consideration Opp.parties 6 to 11 being motivated by the Naib-Sarpanch, sent requisition to the Sub-Collector, Angul for convening a meeting of no confidence motion against the Petitioner. Accordingly, the Sub-Collector, Angul convened a special meeting fixing the date to 6.10.2009 for holding of no confidence motion against the Petitioner. According to the Petitioner before issue of notice for no confidence motion against her, her representation to cancel the

membership of opp.parties 6 to 10 ought to have been considered. Had their membership been cancelled, they could not have passed the resolution for no confidence motion. Hence, the Petitioner prayed to direct the official opp.parties particularly opp. Party No. 3 to act upon the letter of the Petitioner dated 14.9.2009 and quash the notice of no confidence motion dated 16.9.2009 under Annexure-3.

3. In W.P.(c) No. 16024 of 2009 the Petitioners, who are two of the ward members of Pokatunga Gram Panchayat, also prayed to quash the notice of no confidence motion dated 16.9.2009 issued by the Sub-Collector, Angul. As per their case, to abdicate the Sarpanch from her office and to be the Sarpanch in her place, the Naib-Sarpanch motivated some ward members to bring no confidence motion against the Sarpanch. Out of 15 members, he took 13 members to Puri on 14.9.2009 and kept them away from the village till 5.10.2009. On 6.10.2009 they directly came to Pokatunga G.P. Office and voted against the Sarpanch. The Petitioners also took the plea that notice only was served upon them by a special messenger. Copies of requisition and the proposed resolution to be moved in the meeting were not attached to it.

4. Learned Counsel appearing for the Petitioners submitted that as per Section 25(2) of the Gram Panchayat Act, 1964 (hereinafter referred to as "G.P. Act") opp.parties 6 to 10 being disqualified to hold the office of ward member are not competent to sign the requisition. So the notice dated 16.9.2009 deserves to be quashed. At this stage, it would be profitable to quote Section 26(3) of the G.P. Act which reads as follows

26. Procedure of giving effect to disqualifications-

(1) XX XX

(2) XX XX

(3) Where the Collector decides that the Sarpanch, Naib-Sarpanch or any other member is or has become disqualified such decision shall be forthwith published by him on 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.

In the present case, since opp.parties 6 to 10 have not been declared disqualified, they are competent to cast their votes.

5. Learned Counsel for the Petitioners further submitted that the Petitioners in W.P.(c) No. 16024 of 2009 received the notice only and not the requisition and the proposed resolution to be moved in the meeting. On the other hand, learned Addl. Govt. Advocate submitted that relevant record of the Sub-Collector, Angul shows that notices along with requisition and the proposed resolution were served on the Petitioners in W.P.(C) No. 16024 of 2009 through special messenger.

6. Learned Counsel for the Petitioners further submitted that as per Section 24(2) (d) of the G.P. Act notice should be served by post under certificate of posting, and in the present case the same having not been done, it can be presumed that there was no valid service of notice. In support of his submission he relied on the decision Smt. Buli Dash Vs. State of Orissa and others, . As against this, learned Addl. Govt. Advocate submitted that the mode of service or the failure by any member to receive the notice at all will not render the meeting invalid. In support of his submission, he relied on a Full Bench decision of this Court in the case of Sarat Padhi v. State of Orissa and Ors. 1988 (I) OLR 80.

In the case of Smt. Buli Dash (supra) this Court held:

Neither in the order passed by the Collector, nor in any document produced in this Court, it has been shown that as a matter of fact, notice had been served. Moreover when the rules contemplates that notice should be served by post under certificate of posting, sending of notice through special messenger, even if correct, cannot be assumed to be sufficient for the purpose of taking action regarding disqualification for alleged non-attendance of three consecutive meetings.

In the present case, record of the Sub-Collector, Angul shows that notice along with requisition and proposed resolution were served on the Petitioners in W.P.(C) No. 16024 of 2009 and they endorsed to have received the same. In the case of Sarat Padhi(supra), interpreting Section 24(2)(c) of the G.P. Act, a full bench of this Court held as follows:

The Scheme of the notice contemplated u/s 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 the notice and the margin of clear 15 days between the date of the notice and the date of the 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 (c) to Sub-section (2) of Section 24.

In the case at hand, since service of notice was made through (sic) messenger and the Petitioners endorsed in the copy of the notice to (sic) received the same

along with the requisition and proposed resolution, the decision in Smt. Buli Dash (supra) cannot be applicable to the present case, view of the decision in the case Sarat Padhi (supra) it is held that notice was served on the Petitioners in W.P.(C) No. 16024 of 2009 as required u/s 24(2)(c) of the G.P. Act.

7. Learned Counsel for the Petitioner further submitted that as per Rule 226 of the Orissa Grama Panchayat Rules (G.P. Rules in short), if 1/3rd of the total members of the Grama Panchayat submit a requisition to Sarpanch to hold a special meeting, he must call the meeting within thirty days of receipt of the requisition. If he failed to do so within the stipulated period, then the members who signed the requisition, if so liked would report the fact to the Sub-Collector, who would call the meeting within seven days from receipt of the report. According to learned Counsel for the Petitioner, in the present case, the said provision was not complied with. On the other hand, learned Addl. Government Advocate contended that no such requisition is required to be sent to the Sarpanch, for initiating no confidence motion against him.

8. In view of the submission of learned Counsel for the Petitioners, it would be useful to quote Rule 226(i) of the G.P. Rules, which reads as follows:

226.(i) The Sarpanch may call special meeting of the Grama Panchayat at any time and shall do so on the requisition of at least one-third of the total membership of the Grama Panchayat. If the Sarpanch fails to call a meeting within thirty days after receiving such requisition, the members who have signed the requisition may report the fact to the Sub-Collector, who shall thereupon call the meeting within seven days from receipt of the report.

As per this provision, the Sarpanch may or may not call special meeting. But, he is bound to call such a meeting when a requisition is made by at least 1/3rd of the total membership of the G.P. However there is nothing to show that in case of initiating no confidence motion against a Sarpanch, the requisition shall be made to him. If such a requisition is made to the Sarpanch, he would be in an embarrassing position. He may not also call for such a meeting, in which event, the members who signed the requisition may report the fact to the Sub-Collector, who must call the meeting within seven days from the date of receipt of the report. The notice of no confidence motion along with a copy of the requisition and the resolution proposed to be moved in the meeting for want of no confidence in the Sarpanch is required to be sent to all the members of the Grama Panchayat including the Sarpanch. So, the Sarpanch would be aware of the allegation made against him on receiving of the notice. In no way, he would be prejudiced. Learned Counsel for the Petitioner, at this stage, submitted that the power under a statute has to be exercised in accordance with the provision of statute and in no other manner. In the case at hand, the provision under Rule 226(i) having not been complied with, the notice deserved to be quashed. It is also the settled principle of law that procedural law is the handmaid of justice and not its mistress. It is not a tyrant but a servant. So, in the present case, even if requisition was not made to the Sarpanch for holding the special meeting

to initiate no confidence motion against her, it would not be fatal, as no prejudice is caused to her thereby. Where non-compliance of the procedure would prejudice doing justice to the parties, then only it is mandatory, otherwise not.

9. As required u/s 24(2)(a)(c) of the G.P. Act, the Sub-Divisional Officer is required to give notice along with a copy of the requisition and the resolution proposed to be moved to the members of the Grama Panchayat. Learned Counsel for the Petitioners contended that no such resolution was served on any of the Petitioners. So, the notice as well as the meeting recording want of confidence in the Sarpanch could not be supported by law. In support of his submission, learned Counsel for the Petitioners relied on the decision *Smt. Kamala Tiria v. State of Orissa and Ors.* 1991 (2001) C.L.T. 159, where this Court held in a case u/s 39(2)(a) of the Orissa Zilla Parishad Act, 1999, which is *pari-materia* with the provision contained u/s 24(2)(a)(c) of the G.P. Act that unless the proposed resolution to be moved in the meeting to be specially convened by the Divisional Commissioner for recording want of confidence in the President of Zilla Parishad, resolution passed in that meeting recording want of confidence in the Petitioner cannot be supported by law. On the other hand, learned Addl. Government Advocate submitted that the resolution proposed to be moved in the meeting along with requisition and notice were sent to all members of the Gram Panchayat. On perusal of the record in W.P.(C) No. 14559 of 2009 it is seen that a proposed resolution was also sent to the Sub-Collector, Angul which was also received by the Petitioners in W.P.(C) No. 16024 of 2009 as held earlier. The Petitioner-Sarpanch in her writ petition has not taken the plea that she did not receive the notice along with requisition and the proposed resolution. Had she not received any of those documents, she would not have forgotten to take such a plea in the writ petition. So, the decision cited in *Smt. Kamala Tiria* shall not be applicable in the present case.

10. Under such circumstances both the writ petitions are dismissed and the Collector, Angul is directed to publish the result of no confidence motion initiated against the Sarpanch, Namitarani Pradhan (Petitioner in W.P.(C) No. 14559 of 2009) forthwith. No cost.