
(2006) 07 OHC CK 0072
In the Orissa High Court

Nimai Ch. Tandi

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 07-07-2006

Acts Referred:

Orissa Municipal Act, 1950 — Section 54, 54(2)(e)

Citation : (2007) 104 CLT 233 : (2007) 1 OLR 384

Hon'ble Judges : I. Mohanty, J;A.K. Ganguly, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Mohanty, J.—The matter was not in the list today. But on being mentioned, and on the consent of the learned Counsel for the parties, the matter is taken up for hearing and final disposal.

2. Heard Shri H.S. Mishra, learned Counsel for the Petitioner, Shri D.K. Nanda, Learned Addl. Government Advocate for the State and Shri D.K. Joshi, learned Counsel appearing for the caveator, Opposite Party No. 10

3. This Writ Petition has been filed by the Petitioner challenging a notice dated 1.7.2006 (Annexure-3) issued by the Office of the Collector and District Magistrate, Nuapada, for holding a special meeting by the councillors of Khariar N.A.C. By the said notice it is made clear that the meeting has been fixed today (7.7.2006) at 11.00 A.M. to record the vote of "no confidence" by means of secret ballots as provided u/s 54(2)(e) of the Orissa Municipal Act, 1950 (hereinafter referred to as "the Act").

4. From the documents which have been annexed to this Writ Petition, it appears that a requisition for a meeting to record vote of "no confidence" against the Chairman of the N.A.C. who happens of to be the Petitioner, was signed by nine out of thirteen councillors and the same was addressed to the District Magistrate, which was received by the District Magistrate on 22.6.2006. Thereafter, it appears that the District Magistrate proceeded on leave for some personal

ground. But in that case in order to prevent any administrative vacuum an office order was passed by the Joint Secretary to Government of Orissa, General Administration Department, dated 30th June, 2006. By the said office order one Shri Gangadhar Mahananda, O.A. S-1 (S.B.), A.D.M., Nuapada was directed to remain in "formal charge" of the office of the District Magistrate & Collector, Nuapada, during the absence of Shri P.C. Pathnaik, O.A.S.(S.G.), on leave.

It is not in dispute, that the said authorized person who is to function as District Magistrate by virtue of the office order has called a meeting by a notice dated 1st July, 2006, which is scheduled to be held today.

5. In the background of these facts, learned Counsel for the Petitioner submits that the meeting which has been called by a person who has been authorized to function as District Magistrate is wholly illegal. According to him such meeting can only be called by the District Magistrate u/s 54(2) of the Act. Section 54(2) of the Act is set out below:

54. Vote of no confidence against the Chairperson or Vice-Chairperson:

(1) XX XX

(2) In convening a meeting under Sub-Section (1) and in the conduct of business at such meeting the procedure shall be in accordance with the rules, made under this Act, subject however to the following provisions, namely:

(a) no such meeting shall be convened except on a requisition signed by at least one third of the total number of Councillors along with a copy of the resolution of proposed to be moved at the meeting.

(b) the requisition shall be addressed to the District Magistrate.

(c) the District Magistrate shall, within 10 days of receipt of such requisition, fix the date, hour and place of such meeting and give notice of the same to all the Councillors holding office on the date of such notice along with a copy of the resolution and the proposed resolution, at least three clear days before the date so fixed;

(d) the District Magistrate or if he is unable to attend any Gazetted Officer above the rank to which the Executive Officer of the Municipal area belongs who is specially authorized by him in that behalf shall preside over, conduct and regulate the proceedings of the meeting;

XX XX XX

Learned Counsel for the Petitioner submits that since the meeting has not been called by the District Magistrate any decision taken in that meeting is illegal and should not be given effect to. Learned Counsel for the Petitioner further submits that in the instant case by virtue of Annexure-2, the present incumbent has been allowed to remain in formal charge of the office of the District Magistrate and Collector, Nuapada during the absence of Shri. P.C. Pattnaik. Therefore, calling

for a meeting by the present incumbent during the absence of District Magistrate is unauthorized.

6. Refuting the aforesaid contention of the learned Counsel for the Petitioner, learned Counsel for the State and also the learned Counsel for Opposite Party No. 10, submit that under the provision of Sub-Section (16) of Section 3 of the Act, the District Magistrate includes any Magistrate subordinate to the District Magistrate to whom he may delegate all or any of his powers under the said Act.

7. Considering the facts and circumstances of the case, we are of the view that the arguments which have been advanced by the learned Counsel for the State and also by the learned Counsel for Opposite Party No. 10, are base on sound reasons. It is well known that when a District Magistrate is on leave, the administration cannot be left in a state of limbo and there should not be any administrative vaccum. In order to see that there is no administrative vaccum, the Joint Secretary to Government of Orissa, General Administration Department, has specifically authorized the present incumbent remain in charge of the office of the District Magistrate and Collector. Since the said charge, which has been given to the present incumbent, has been given by the Joint Secretary to Government of Orissa, there is a impediment on the part of the sent incumbent to issue the aforesaid notice.

We are of the view that the term "District Magistrate" contained in Section 54 of the Act also includes within the said term any person who is vested with "formal charge" of the office of the District Magistrate, by the competent authority. There being no dispute that the present incumbent has been vested with "formal Charge " of the office of the District Magistrate by the Competent Authority challenge against his exercise of statutory powers can not be entertained.

8. Learned Counsel for the, Petitioner urged that the present incumbent has issued the notice without verifying the signatures of the representationists. In fact, there exits no such statutory requirement. On the other hand, the statutory requirement is that the meeting should be called within ten days of receipt of requisition by the District Magistrate. Therefore, calling a meeting on 7th of July, 2006, does not violate any terms of the statute. The contentions raised by the learned Counsel for the Petitioner are not acceptable by this Court.

9. We, therefore, do not find any reason to injunct the proceedings of the said meeting.

10. The Writ Petition is accordingly dismissed.