

(1994) 11 OHC CK 0023
In the Orissa High Court
Case No : O.J.C. No. 7338 of 1994

Nimain Charan Mohanty

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 08-11-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Orissa Panchayat Samiti Act, 1959 — Section 46B, 46B(2), 46B(3)

Citation : AIR 1995 Ori 106

Hon'ble Judges : V.A. Mohta, C.J; R.K. Patra, J

Bench : Division Bench

Advocate : Sourya Sundar Das, for the Appellant; B.K. Nayak, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

V.A. Mohta, C.J.—Nimain Charan Mohanty is the Chairman of Oondia Panchayat Samiti in the district of Dhenkanal. Election had taken place on 14-7-1992 in terms of Section 16(3) of the Orissa Panchayat Samiti Act, 1959 (the Act). Sometime in early August, 1994, 15 members of the Panchayat Samiti had sent to the Sub-Collector, Dhenkanal, a requisition petition to convene a special meeting of the Samiti for consideration of a no-confidence motion against the Chairman. Vide order dated 28-8-1994, the said requisition petition was rejected and hence not acted upon on the ground that the petition was not in order in terms of clause (a) of Sub-section (2) of Section 46-B of the Act, which provides for signature of at least 1/3rd of the members with a right to vote. Consequently, no special meeting was, in fact, convened. On 25-10-1994, a second requisition for the same purpose, signed by 30 members, was given, pursuant to which a special meeting, as contemplated by Section 46-B, has been convened by the Sub-Collector on 9-11-1994. Out of 30 signatories on the requisition, 13 are members of the Samiti with a right to vote. The total membership of the Panchayat Samiti with right to vote is 24. Is the second requisition and the order of convening the special meeting legal? The Chairman says that it is not, and

hence this petition by him to stall the meeting scheduled for tomorrow.

2. Only the following three grounds have been pressed into service before us by Shri Das, learned counsel for the petitioners :-

(1) The requisition is in violation of Section 46-B (3) (as recently amended) having been issued within one year of the first requisition.

(2) It is in violation of Section 46-B(2)(a) having been signed by majority of Samiti members who have no right to vote.

(3) It is a mala fide move by the Sarpanchas for political considerations.

3. Section 46-B lays down a near complete procedure and machinery to deal with the no-confidence vote against the Chairman and the Vice-Chairman of a Samiti. We reproduce the said provision for ready reference :-

"46-B. Vote of no-confidence against Chairman and Vice-Chairman of Samiti:-

(1) Where at a meeting of the Samiti specially convened in that behalf a resolution is passed, supported by a majority of not less than two-thirds of the total number of members having a right to vote, record want of confidence in the Chairman or Vice-Chairman of such Samiti, the resolution shall forthwith be published by such authority and in such manner as may be prescribed and with effect from the date of such publication the Chairman or Vice-Chairman, as the case may be, shall be deemed to have vacated office.

(2) In convening a meeting under Sub-section (1) and in the conduct of business at such meeting the procedure herein specified shall be followed, namely:-

(a) no such meeting shall be convened except on a requisition signed by at least one-third of the members with a right to vote, along with a copy of the resolution proposed to be moved at the meeting;

(b) the requisition shall be addressed to the Sub-Divisional Officer;

(c) the Sub-Divisional Officer, on receipt of such requisition shall fix the date, hour and place of such meeting and give notice of the same to all the members with a right to vote, along with a copy of the requisition and of the proposed resolution at least seven clear days before the date so fixed;

(d) the Sub-Divisional Officer or when he is unable to attend any other gazetted officer not below the rank of a Sub-Deputy Collector, authorised by him, shall preside over and conduct the proceeding of the meetings;

(e) the voting at all such meeting shall be by secret ballot;

(f) no such meeting shall stand adjourned to a subsequent date and no item of business other than the resolution for recording want of confidence in the Chairman or the Vice-Chairman shall be taken up for consideration at the meeting;

(f-1) no such resolution shall be taken up for consideration unless it has been proposed by one member and has been seconded by another member at the meeting;

(f-2) after the resolution is taken up for consideration the member proposing the resolution may open the discussion thereon and other members may speak on the resolution in the order in which they are called upon by the Presiding Officer;

Provided that no members shall unless so permitted by the Presiding Officer, have the right to speak more than once and if any member who is called upon does not speak he shall not be entitled, except by the permission of the Presiding Officer, to speak at a later stage of the discussion :

(f-3) where the Chairman or, as the case may be, the Vice-Chairman, against whom the resolution has been tabled, is present, he shall be given an opportunity to speak by way of reply to the resolution and the discussion at the meeting;

(f-4) the Presiding Officer may fix the time within which each member, including the Chairman and Vice-Chairman, shall conclude his speech;

(g) if the number of members present at the meeting is less than a majority of two-thirds of members having a right to vote, the resolution shall stand annulled; and

(h) if the resolution is passed at the meeting supported by a majority of two-thirds of members having a right to vote, the Sub-Divisional Officer shall forward the resolution to the authority prescribed in pursuance of sub-section (1).

(3) When a meeting has been held in pursuance of a requisition under Sub-section (2) for recording want of confidence in the Chairman or Vice-Chairman, as the case may be, no fresh requisition for a meeting shall be maintainable before the expiry of -

(a) thirty days from the date of the meeting in case falling under clause (g) of Sub-section (2); and

(b) one year from the date of the meeting, in case falling under clause (h) of the said subsection or where the resolution is defeated " after being considered at such meeting.

(4) Without prejudice to the provisions of Sub-section (3) no requisition under Sub-section (2) shall be maintainable in the case of a Chairman or Vice-Chairman, as the case may be, before the expiry of one year from the date on which such Chairman or Vice-Chairman enters office."

4. Sub-section (3) of Section 46-B has recently been amended by Orissa Panchayat Samiti (Amendment) Ordinance, 1994 with effect from 11-8-1994. The old Sub-section (3) has been substituted by the following new:-

"(3) When a meeting has been held in pursuance of Sub-section (2) for recording

want of confidence in the Chairman or Vice-Chairman, as the case may be, no fresh requisition for a meeting shall be maintainable-

(a) in cases falling under clauses (g) and (h) of the said sub-section or where the resolution is defeated after being considered at the meeting so held, before the expiry of one year from the date of such meeting; or

(b) where the notification calling for general election to the Samiti has already been published under or in pursuance of Sub-section (2) of Section 49."

None is sure as to whether by now the Ordinance has been replaced by the Act or not, though a copy of the Bill has been produced before us, but that is beside the point.

5. The object of the urgent amendment, as can be called out from the Statement of Objects and Reasons, is :-

"The general election to the Panchayat Samitis in the State was held during May-June, 1992. By now, the limitation of two years having expired, a large number of no-confidence motions have been moved against the Chairman and Vice-Chairman of different Samitis in the State for consideration in a special meeting convened u/s 46-B(2) of the O.P.S. Act, 1959. Some of the requisitions have been passed and others have stood annulled. In the cases of the latter, fresh requisitions are also being filed with the concerned Sub-Collector for convening a meeting to record want of confidence against the Chairman and Vice-Chairman of the Samitis since it is maintainable on expiry of the period of 30 days from the date of the meeting as aforesaid. Frequency of such requisitions distracts the Chairpersons from the pursuit of developmental goals and results in destabilisation of the functioning of the Samitis. Unless the frequency of filing and maintainability of such requisitions is curtailed, one cannot be confident of holding an office for a reasonably stable period and unless stability of tenure consistent with democratic norm is assured, one will not be in a position to devote one's attention and time towards the developmental programmes of the area.

It is, therefore, proposed to amend Sub-section (3) of Section 46-B of the Orissa Panchayat Samiti Act, 1959 suitably to the effect that when a meeting has been held in pursuance of Sub-section (2) of the said section, irrespective of the fact that the resolution either has stood annulled or is defeated, no fresh requisition for such a meeting shall be maintainable before the expiry of one year from the date of the meeting so held. No requisition for a meeting under Sub-section (2) shall also be maintainable on or after the date of notification calling for general election under Sub-section (2) of Section 49."

6. We have fully reproduced above the Statement of Objects and Reasons since it was repeatedly read out to us and has been heavily relied upon. The principal object in bringing about this amendment seems to be to enhance the time limit of 30 days specified in clause (a) of Section 46-B(3) to one year with a view to

bring it at par with the period prescribed in the old clause (b), so that the Chairman or the Vice-Chairman can work in peace for at least one year once in the special meeting held in pursuance of Sub-section (2) for recording want of confidence, either the motion is defeated or the number of members present at the meeting is less than a majority of two-thirds of the members having a right to vote or the resolution is not passed at the meeting supported by a majority of two-thirds of members having a right to vote. It is patent that in each case the starting point for computing the period of bar for fresh requisition for the meeting is and was the date of the special meeting actually held in pursuance of a requisition as per law. By the amendment, no change has been brought about in the starting point; the change is only in the period. This is amply clear from the plain language of the amended provision, so also the stated object behind it. No special meeting having been held in pursuance of the earlier requisition, there is no question of a bar for the second requisition within the alleged prohibited period. The submission that the real intention of the Legislature was to create a bar against a second requisition within one year despite absence of a special meeting in pursuance of the first requisition does not warrant acceptance. To do so would be to go against the object and also to re-write the sub-section by judicial interpretation. This is impermissible under the canons of interpretation. The first point must, therefore, fall.

7. Section 46-B(2) contemplates a requisition to be signed by at least one-third of the members with a right to vote and nothing more. That requirement is fulfilled. Thirteen out of the twenty-four members with a right to vote have put their hand on the requisition. Seventeen more, who may not have a right to vote, have also put their hand. But that would make no difference. At the most, it is a surplusage which can be just ignored. That the number of surplusage is larger will have no impact on the legality of the requisition. The second point is also equally meritless.

8. Now, the last of the points, which seems to be the weakest. In fact, it has to be stated merely to be rejected. The contention is that some Sarpanchas, who have no right to vote in the meeting, have combined against the petitioner for political considerations and hence the requisition is a mala fide move. Correctness of this factual assertion cannot be adjudicated in writ jurisdiction. Assuming it to be so, it is difficult to see how the Sub-Collector could have at that stage refused to convene the meeting on the basis of otherwise a valid requisition. The possibility of politics in such moves cannot always be ruled out. But mere politics cannot be decisive of the question.

9. To conclude, the petition is dismissed. No order as to costs.

R.K. Patra, J.

10. I agree.