

(1972) 11 OHC CK 0006
In the Orissa High Court
Case No : O.J.C. No. 439 of 1972

Nirmal Chandra Misra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 29-11-1972

Acts Referred:

Orissa Grama Panchayat Act, 1964 — Section 24(1)

Citation : (1973) 39 CLT 251

Hon'ble Judges : G.K. Misra, C.J.; K.B. Panda, J

Bench : Division Bench

Advocate : M.N. Lal and B. Mohanty, for the Appellant; M. Patra, G.C. Mohapatra, Mahadev Misra and A.G., for the Respondent

Judgement

G.K. Misra, C.J.—The Petitioner is a Sarpanch of Bania Grama Panchayat. On 30-4-197 a meeting was convened to pass a vote of no-confidence. The Presiding Officer came to the conclusion that there was a valid vote of no-confidence. The same was accepted by the Collector and the Sarpanch was removed from his office.

2. Mr. Das for the Petitioner contends that on the admitted position that four of the votes were disqualified out of fourteen casted on the day, there was no two-third majority and the removal of the Sarpanch was illegal. In that Grama Panchayat there are 16 members. On 10-4-1972, 14 members were present.

All the fourteen casted vote by secret ballot. Four of the ballot papers were rejected as not being in conformity with law. There were thus ten valid votes. The total members of the Grama Panchayat being sixteen, eleven valid votes are necessary to have two-third majority. As the valid votes were ten, there was no two-third majority to carry out the vote of no-confidence.

3. Section 24(1) of the Orissa Grama Panchayat Act, 1964 runs thus:

24. Vote of no-confidence against Sarpanch or Naib-Sarpanch:- (1) Where at a meeting of the Grama Panchayat specially convened by the Sub-Divisional Officer

in that behalf a resolution is passed, supported by a majority of not less than two-thirds of the total membership of the Grama Panchayat, recording want of confidence in the Sarpanch or Naib-Sarpanch the resolution shall forthwith be forwarded by the Sub-Divisional Officer to the Collector, who shall immediately on receipt of the resolution publish the same on his notice-board and with effect from the date such publication the member holding the office of Sarpanch or the Naib-Sarpanch, as the case may be, shall be deemed to have vacated such office.

It is clear from the aforesaid sub-section that the vote of no-confidence must be supported by a majority of not less than two-thirds of the total members of the Grama Panchayat. As the vote of no-confidence was not supported by eleven members but by only ten members, the vote of no-confidence was not carried out. The Sarpanch could not have been removed by such a vote on no-confidence.

4. It is somewhat remarkable that the Presiding Officer said that after the secret balloting took place all the members declared there that they unanimously passed the vote of no-confidence. It was quite elementary and should have been apparent to the Officer that after the secret balloting was over, any further unanimous declaration had no validity in law and on such a declaration no action should have been taken against the Sarpanch.

5. In the result, the writ application is allowed with costs which will be paid by opposite party Nos. 1 and 2. A writ of mandamus be issued to the opposite parties to allow the Petitioner to function as Sarpanch. Hearing fee of Rs. 100/-.

K.B. Panda, J.

6. I agree.