

(2006) 03 OHC CK 0005
In the Orissa High Court
Case No : Writ Petition (C) No. 8092 of 2004

Parbati Hembram

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 24-03-2006

Acts Referred:

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

Citation : (2006) 101 CLT 697 : (2006) 1 OLR 685

Hon'ble Judges : P.K. Tripathy, J;A.K. Parichha, J

Bench : Division Bench

Advocate : Niranjana Lenka, M.R. Mohapatra, A. Parida and P.K. Tripathy, for the Appellant; A.K. Mishra for opp. parties 1 to 4, S.P. Mishra, S. Mishra, S. Dash, S. Nanda and B. Mohanty for opp. parties 7 to 23, for the Respondent

Final Decision : Allowed

Judgement

P.K. Tripathy, J.—Petitioner is the Chairman of Baripada Panchayat Samiti in the district of Mayurbhanj, A motion of no confidence was initiated against her u/s 46-B of the Orissa Panchayat Samiti Act, 1959 (in short "the Act"). Challenging to that, petitioner has filed this writ petition with the following prayer:

It is, therefore, prayed that Your Lordships be graciously pleased to admit this writ application, issue rule Nisi in the nature of Writ of Mandamus or any other writ(s) calling upon the Opp. Parties to show cause as to why the notice, requisition vide Annexure-1 & 2, and any resolution passed on 25.7.2004 pursuant to the said notice, requisition shall not be quashed and why the petitioner shall not be allowed to continue as Chairman of Baripada Panchayat Samiti and why an enquiry shall not be made under what circumstances such an illegal resolution is passed. In the event if the Opp. Parties fail to show cause or show insufficient cause, said Rule be made absolute;

And further be pleased to pass any other order(s), directions (s), as deem fit and proper;

And for which act of kindness the petitioner as in duty bound shall ever pray.

2. Grievance of the petitioner, inter alia, is that though the statutory requirement for service of the notice is at least seven days before the date of "no confidence motion", but in this case she was served with notice Annexure-1 on 24.07.2004 when the meeting for no confidence was fixed to 25.07.2004. Opposite Party Nos. 2 and 3, in their counter, have not denied the aforesaid contention of the petitioner, but they have explained that the notice of no confidence was issued to the petitioner on 16.07.2004 in her permanent address and a copy of that notice was served on her on 24.07.2004 in her official residence (paragraph-7 of the counter affidavit of opp.parties 2 and 3). According to the case of the opposite party members, it is the date when the notice was issued is relevant and not the date on which it was served on the petitioner. In that context, opposite parties relied on the ratio in the case of Sarat Padhi v. State of Orissa and Ors. 1988 (I) OLR 80 and Smt. Heeramani Munda Vs. The Collector and Others, Learned Counsel for the opposite party members further state that petitioner was present at the place of meeting on 25.07.2004 and therefore she cannot take advantage of the ground which has been advanced by her as against the no confidence motion. On the other hand, petitioner relied on the case of Nilambar Majhi v. Secretary to Govt. of Orissa, Panchayat Raj Deptt. and Ors. 2005(11) CLR and argued that when the purpose for issue of a notice is to make the petitioner aware of such a proposed motion of no confidence and also to give her adequate time to prepare to face the said motion, her presence alone on 25.07.2004 does not cover the aforesaid lapses of mandatory provision of law committed by the opposite parties. In that respect he also relied on the observation of the Apex Court in the case of K. Narasimhiah Vs. H.C. Singri Gowda, .

3. Section 46-B (2) (c) of the Act is the provision relating to the manner of taking steps for issue of notice. That provision reads as hereunder:

the Sub-divisional Officer on receipt of such requisition shall fix the date, hour and place of such meetings 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.

(underlined by us to put emphasis)

It is clear from the aforesaid statutory provision that excluding the date of notice and the date of the meeting, there should be clear seven days" notice before the date of no confidence motion. A similar legal issue arising for a parametric dispute under the Orissa Grama Panchayat Act, 1964 was considered by the Full Bench in the case of Sarat Padhi (supra). The sequence of law and its consequence was discussed and it was held thus :

18. XX XX XX

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 and 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....

4. In the case of Smt. Heeramani Munda (supra) the same view was reiterated and no confidence motion was quashed because of want of clear 15 days" notice (under the Orissa Grama Panchayat Act, 1964). In the case of Nilambar Majhi (supra), after taking note of all such decisions, this Court has held that in the absence of proper notice giving clear 15 days" time, the meeting for the no confidence motion would be illegal. In the case of K. Narasimhiah (supra) in dealing with the notice of no confidence under Mysore Town Municipalities Act, 1951 their Lordships defined the term "Giving" and laid down that:

(11) "Giving" of anything as ordinarily understood in the English language is not complete unless it has reached the hands of the person to whom it has to be given. In the eye of law however "giving" is complete in many matters where it has been offered to a person but not accepted by him. Tendering of a notice is in law therefore giving of a notice even though the person to whom it is tendered refuses to accept it. We can find however no authority or principle or the proposition that as soon as the person with a legal duty to give the notice dispatches the notice to the address of the person to whom it has to be given, the giving is complete....

5. Applying the fact situation of the present case to the aforesaid statutory provision and the ratio laid down by this Court and the Apex Court, it is seen that notice was issued to the petitioner in her permanent address. In the counter affidavit, the opposite parties have not stated that such notice was issued to the petitioner because she was staying in her permanent address and not at her official residence, i.e., the present address. When opposite parties 2 and 3 knew about her present address, notice could have been given in that address instead of in the permanent address. If they wanted to be doubly sure about giving the notice, then they could have sent it in both the address. There is nothing on record, much less any assertion from the side of the opposite party members in their counter affidavit, to indicate that petitioner shifted to her official residence from the permanent address with a view to avoid receiving notice Annexure-1. In other words, when the fact situation is not disputed on record, the authorities

were not bona fide in their action in sending the notice in an address where she was not residing at that time. When the opposite party members have not stated that they were not aware of the whereabouts of the petitioner, their act in sending such notice in the permanent address of the petitioner does not amount to giving proper notice as required under law. This analysis of fact situation is only applicable to this case because of the above noted facts and circumstances. In view of that, we find that service of notice in the afternoon of 24.07.2005 asking the petitioner to participate in the no confidence motion on 25.07.2004 at 11 A.M. is indeed in the breach of the provision in Section 46-B(2) (c). Therefore, the notice Annexure-1 and consequently no confidence motion which was taken up, are rendered illegal and quashed accordingly. Since the no confidence motion has been quashed on the ground of defective procedure adopted, therefore, the restrictions imposed u/s 46-B(3)(a) of the Act should not apply. Be that as it may, the period of one year from that no confidence motion has already expired much before in the month of July, 2005.

6. In the result, we allow this writ petition and allow the petitioner to continue as the Chairman of Baripada Panchayat Samiti and direct that she shall not be removed on the basis of no confidence motion which was initiated as per the notice Annexure-1.

A.K. Parichha, J.

7. I agree.