
(2015) 10 OHC CK 0030
In the Orissa High Court
Case No : Writ Petition (C) No. 17873 of 2014

Prahallad Dalei

APPELLANT

Vs

State of Odisha and Others

RESPONDENT

Date of Decision : 09-10-2015

Acts Referred:

Orissa Grama Panchayat Act, 1964 — Section 24, 24(2)(a)

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

Citation : (2015) 10 OHC CK 0030

Hon'ble Judges : C.R. Dash, J

Bench : Single Bench

Advocate : Sarat Ch. Mishra and A.K. Mishra, for the Appellant

Final Decision : Dismissed

Judgement

C.R. Dash, J—Whether Annexure-3 is the relevant resolution, as contemplated under Section 24(2)(a) of the Orissa Gram Panchayat Act, 1964 ("the Act" for short), is the only question that arises for consideration in the present writ petition.

2. The petitioner, in the present writ petition, impugns the Notice dated 11.09.2014, Annexure-1, issued by the Sub-Collector, Khurda (opp. party No. 3) calling upon the petitioner to attend the specially convened meeting for recording confidence against him to be held on 29.09.2014 at 11 A.M. in the office of the Bolagarh Gram Panchayat.

3. Petitioner is the elected Sarpanch of Bolagarh Gram Panchayat. Prior to the present move by requisite number of Ward Members against the petitioner, some of the Ward Members including the present opposite party Nos. 4 to 13 had moved the Sub-Collector, Khurda (O.P. 3) earlier expressing want of confidence against the petitioner. Notice dated 11.06.2014 was issued by the Sub-Collector, Khurda fixing the meeting of No Confidence to be held on 27.06.2014. Said notice dated 11.06.2014 was challenged in W.P. (C) No. 11062 of 2014 before

this Court. This Court, vide order dated 20.06.2014, dismissed the writ petition observing that there is no contravention of Section 24(2)(a) and (c) of the Act. The petitioner, against the order of the Single Judge, filed W.A. No. 227 of 2014. This Court vide judgment dated 05.04.2014 allowed the Writ Appeal and quashed the notice for No Confidence Motion on the ground that the notice given for meeting of No Confidence was not accompanied with requisite requisition and proposed resolution to be moved.

4. Again opposite party Nos. 4 to 13 initiated the present move in their meeting dated 29.08.2014 held in the temple of Maa Ram Chandi Thakurani. Requisition was sent to the Sub-Collector, Khurda vide Annexure-2, which was received by the Sub-Collector, Khurda (O.P. 3) on 20.09.2014. After due processing and verification of signatures of the signatories in the requisition and resolution vide Annexures 2 and 3, the Sub-Collector, Khurda issued the impugned Notice on 11.09.2014 fixing the meeting of No Confidence Motion on 29.09.2014.

5. Learned counsel for the petitioner submits that, Annexure-3 is not the proposed resolution, as contemplated in Section 24(2)(a) of the Act. To substantiate his contention, he relies on the case of Smt. Kamala Tiria Vs. State of Orissa and others, AIR 2001 Ori 67 : (2001) 91 CLT 159 and Mukhtamanjari Sahoo Vs. State of Orissa and Others, (2010) 110 CLT 645 : (2010) 2 OLR 473 .

Learned Additional Govt. Advocate on the other hand submits that, Annexure-3 is the proposed resolution and no format having been prescribed in the Act and Rules, Annexure-3 is to be broadly accepted as the proposed resolution, as it contains the intention of the signatory Ward Members wanting confidence on the petitioner.

Learned counsel for opposite party Nos. 4 to 13 is also of the same view.

6. Detail procedure have been provided in Clauses (a) to (k) occurring in Sub-Section (2) of Section 24 of the Act regarding the conduct of No Confidence Motion against a Sarpanch or a Naib-Sarpanch. Section 24(2)(a) of the Act provides that the vote of No Confidence Motion against the Sarpanch or the Naib-Sarpanch shall not be passed except at a specially convened meeting, and no such meeting shall be convened except on a requisition signed by at least 1/3rd of the total members of the Gram Panchayat along with a copy of the resolution proposed to be moved at the meeting. Once the requisition is received, it is the duty of the Sub-Collector to take steps to convene a special meeting and the resolution has to be voted upon at the meeting.

7. The allegation is that, though Annexure-3 was sent along with the requisition vide Annexure-2 to the Sub-Collector, Khurda (O.P. 3), Annexure-3 is the resolution signed on 29.08.2014 by nine of the Ward Members and the same cannot be said to be the proposed resolution to be moved at the specially convened meeting, or in other words, Annexure-3 cannot be said to be the resolution which has to be voted upon at the meeting.

8. The law on this point is no more *res integra*. A Division Bench of this Court, in the case of Jagadish Pradhan and Others Vs. Kapileswar Pradhan and Others, (1987) 64 CLT 359 , was considering a similar question under Section 46 (B)(2) of the Orissa Panchayat Samiti Act, 1959 ("Act, 1959" for short), which is a *pari materia* provision with Section 24 of the Act. In the said case the proposal or the proposed resolution was not in a separate sheet or document. It was there in the resolution moved by requisite number of members to the appropriate authority for recording confidence against the Chairman of the Panchayat Samiti. This Court, in paragraph-7 of the judgment, held thus:--

"7. The revisional authority has held that the mandatory provision that no meeting shall be convened except on a requisition along with a copy of the resolution proposed to be moved, has not been complied with as a copy of the resolution proposed to be moved at the meeting in which a vote of no confidence has to be passed was not appended. True it is that Section 46-B(2) requires a copy of the resolution proposed to be moved at the meeting to be along with the requisition. In the resolution dated 24-3-1985 the proposal was clearly mentioned to be the absence of confidence of the signatories on the Chairman. Merely because the proposal is not in a separate document, it cannot be said that the action thereupon becomes illegal. There is no form prescribed for such a proposed resolution. The authority, i.e. the Sub-divisional Officer well understood the intention behind the resolution and rightly treated the same to be in compliance of the requirement of Section 46-B(2). The finding of the revisional authority that the mandatory provision has not been complied is thus an error of law apparent on the face of the record."

In the case of Smt. Kanti Kumbhar Vs. State of Orissa and Another, (2001) 2 OLR 44 , the specially convened meeting was fixed to 22.11.2000 on the basis of resolution dated 03.09.2000. It was contended before the Court that, the requisition along with the proposed resolution was adopted at a meeting on 03.09.2000 and the same cannot be said to be the proposed resolution to be moved in the meeting for No Confidence.

A Single Bench of this Court was considering the aforesaid contention in connection with Section 46-B(I) of the Orissa Panchayat Samiti Act, 1959. This Court in paragraph-6 of the judgment held thus:--

".....There is no requirement in the Act that, before sending such a requisition, there has to be a formal meeting of the Panchayat Samiti. It is, of course, true that in the present case the proposed resolution relating to No Confidence was also purported to have been adopted in a meeting held on 03.09.2000. Such a meeting of some of the members of the Panchayat Samiti does not have any statutory force and is not required to be held in a particular manner. It can be considered to be a convenient method for preparing requisition along with the proposed resolution (No Confidence Motion). Therefore, even assuming that such a meeting had been held without following any procedure contemplated under Section 46-B, the requisition on the basis of so called resolution adopted in such

meeting does not become illegal and on the basis of such requisition the meeting contemplated under Section 46-B(I) could be legally convened by the prescribed authority, if other conditions are fulfilled."

In the aforesaid case also the resolution dated 03.09.2000 was accepted as the proposed resolution.

In the case of Dasaratha Munda Vs. Collector and Others, (2007) 1 OLR 242 Supp , a Division Bench of this Court, in paragraph-8 of the judgment, held thus:--

"8. The 3rd contention is that the requisition did not contain the proposed resolution. It is to be noticed that the petitioner himself in paragraph-6 of the writ petition has mentioned that the meeting has been convened on the basis of the old resolution meaning thereby - he concedes that the documents sent along with the requisition was a resolution. Besides this, the words at the top of the enclosure to the letter of Annexure-3 "SWATANTRA BAITHAKARE ALOCHANA HEBAKU THIBA PRASTAB" have been mentioned, which means, the proposed discussion to be made in the special meeting with regard to the proposed no confidence motion. In that last four lines of the said enclosure the contents of the resolution have also been mentioned in clear terms. According to Chambers English Dictionary, we make it clear that "resolution" means, "a formal proposal put before a meeting, or its formal determination thereon". Therefore, this contention is also not sustainable in the eye of law."

In the case of Padmini Nayak Vs. State of Orissa and Others , a Division Bench of this Court, in paragraph-4 of the judgment held thus:--

".....It is alleged that, Annexure-2 is not a requisition and Annexure-3 is not the proposed resolution. A close reading of Annexure-2 reveals that 8 out of 12 Ward Members of the Grama Panchayat wrote to the Sub-Collector, Panposh requesting him to take necessary steps and action on the no confidence motion brought by them against the petitioner. The wordings of this document show that it is a letter of requisition sent by the 8 Ward Members to the Sub-Collector. Annexure-3 was enclosed along with Annexure-2. In Annexure-3 it has been mentioned that on 11.3.2004 an urgent meeting under the Chairmanship of Sri Plasidas Kerketta was held with the attendance of the 8 Ward Members and that in the said meeting a thorough discussion was made about the action and manner of functioning of the petitioner - Sarpanch. Some of the alleged misdeeds of the Sarpanch have been noted in Annexure-3 and it has been mentioned that because the Ward Members have lost confidence on the Sarpanch, the signatories proposed no confidence motion against the Sarpanch. Request was also made in this document to the Sub-Collector to take steps under Section 24 of the G.P. Act. Annexure-3 can therefore, be broadly accepted as proposed resolution....."

In the case of Smt. Sandhyatara Behera Vs. Sub-Collector and Others, (2011) 112 CLT 442 : (2011) 1 OLR 677 , it was contended that, in fact, Annexure-3 is

not the proposed resolution, and it is a resolution wherein it was proposed to initiate No Confidence Motion against the petitioner by sending requisition in that record to the Sub-Collector. On perusal of Annexure-3, this Court held that Annexure-3 is the proposed resolution to be moved at the time of holding meeting for want of confidence against the petitioner.

9. Learned counsel for the petitioner leans heavily in the case of Kamala Tiria (supra). This Court, in the case of Padmini Nayak (supra) in paragraph-5 has distinguished the case of Kamala Tiria (supra) as follows:--

"5. In Smt. Kamala Tiria's case (supra) the requisition for convening the meeting to record want of confidence was not signed by the requisite number of members, but was signed by one member in a representative capacity. The resolution proposed to be moved at the meeting was not enclosed to the requisition. Some of the members, who were shown as signatories to the requisition, denied that they were ever present in the emergency meeting and some nominated members who had no right of voting were also allowed to remain present at the meeting held for recording the no confidence motion. For all these lacunae the resolution passed regarding want of confidence was declared null and void. The ratio of the said case in no way applies to the present case as the facts and circumstances involved in that case is totally different from this case. In the present case 8 out of the 12 members of the Grama Panchayat have signed the requisition Annexure-2 and copy of the proposed resolution Annexure-3 was also enclosed with Annexure-2. So, the mandates of Section 24(2)(a) of the G.P. Act was substantially complied with."

In the case of Muktamanjari Sahu (supra) this Court quashed the Notice issued by the Sub-Collector on the ground that the resolution passed for initiating No Confidence Motion is not the resolution as contemplated under Section 24(2)(a) of the Act, as per the decision rendered in the case of Smt. Kamala Tiria (supra).

10. From the discussions supra, it is clear that -

"(i) no form or proforma has been prescribed either for the Notice to be issued by the Sub-Collector calling upon the members including the Sarpanch or Naib-Sarpanch to attend the meeting of No Confidence, or for the requisition to be sent by 1/3rd members of the Grama Panchayat or for the proposed resolution to be moved.

(ii) If the intention of the requisite number of members is clear from the resolution adopted in the meeting held to prepare the requisition and the proposed resolution, then the said intention is to be accepted as indicatives of the fact that requisite number of members want to move a No Confidence Motion and that resolution adopted in such meeting is to be abstractly accepted as the proposed resolution.

(iii) The so called proposed resolution to be moved need not be on a separate sheet or document."

11. In the present case it is found from Annexure-3 that it starts with the heading "PRASTABITA SANKALPA (Proposed Resolution) NIMANTE SWATANTRA ADHIBESAN" - meaning, Special Meeting for Proposed Resolution. The meeting, vide Annexure-3 was held on 29.08.2014 under the Chairmanship of one Satya Ranjan Samantaray. Said meeting was held in the temple of Maa Ram Chandi Thakurani and 10 Ward Members had attended the meeting. The resolution further says that "BOLGADA GRAM PANCHAYATARA SARPANCH SRI PRAHALLAD DALAINKA BIRUDDHARE AAGATA HEBAKU THIBA ANASTHA PRASTABA NIMNAMATE PRASTABITA SANKALPA GRAHANA KARAGALA" - which means, "Following Proposed Resolutions adopted for the meeting of No Confidence to be convened against Sri Prahallad Dalai, Sarpanch of Bolgada Grama Panchayat." Resolution No. (1) of the meeting describes about some of the misdeeds and misdemeanour of the petitioner and it is further stated in Resolution No. (1) that, as the members have lost confidence over the petitioner, they intend to convene a meeting of No Confidence against him. If Annexure-3 is tested on the touchstone of the settled law discussed supra, there is no escape from the conclusion that Annexure-3 is the proposed resolution or the relevant resolution as contemplated in Section 24(2)(a) of the Act, and, understanding the intention of the signatory Ward Members in Annexure-3, the Sub-Collector has acted on the requisition vide Annexure-2. I, therefore, do not find any illegality in the meeting convened on the basis of Annexures 2 and 3.

12. In the result, the writ petition is dismissed. The result of the No Confidence Motion kept in sealed cover be declared forthwith and action in accordance with law be taken pursuant to such resolution.