
(2006) 03 OHC CK 0001
In the Orissa High Court
Case No : Writ Petition (C.) No. 1021 of 2006

Rabinarayan Jani

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 24-03-2006

Acts Referred:

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

Citation : (2006) 101 CLT 796 : (2006) 1 OLR 502 Supp

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

Bench : Division Bench

Advocate : D.P. Dhal, S. Mohapatra, K. Dash and B.B. Mishra, for the Appellant;
A.K. Mishra, SC, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Tripathy, J.—Petitioner is the Chairman of Harabhanga Panchayat Samiti in the district of Boudh. He was served with notice Annexure-2 to face the no confidence motion on 30.1.2006, He has filed this writ petition challenging to that notice, inter alia, on the ground that there was no valid resolution and requisition u/s 46-B of the Orissa Panchayat Samiti Act, 1959 to convene a meeting for no confidence motion and therefore the notice Annexure-2 be quashed. In the said context, petitioner also stated that requirement of law in Section 46-B(2)(b), (d), (f-1) and (f-2) were not properly complied with. Opposite party Nos. 2 and 3 have filed counter affidavit and have denied to the aforesaid allegations of non-compliance of the statutory requirement. The caveator/intervener has also filed a counter affidavit and the petitioner has filed a rejoinder to such counter affidavit.

2. Referring to Annexures 1 and 2 series, Learned Counsel for the petitioner argued that there was no proper requisition for convening a meeting to propose for no confidence, the Tahsildar being not a Sub-Deputy Collector, he could not have been authorized by the Sub-Divisional Officer to preside over the meeting and conduct the proceeding of the meeting of no confidence and the resolution

was not proposed by only one member (thereby not more than one) and seconded by only one member (not by more than one) at the meeting and the member proposing the resolution did not open discussion and that is how the mandatory provision in Clauses (b), (d), (f-1) and (f-2) of Sub-section (2) of Section 46-B were violated. After going through Annexure-2 series, we do not find any substance in the aforesaid criticism inasmuch as a meeting was requisitioned by requisite number of members so also a resolution was passed to move no confidence motion and that was communicated to the Sub-Collector, Boudh, and on the basis of that the notice was given to the petitioner on 19.1.2006 intimating him that at 11.30 a.m. on 30.1.2006 the meeting of no confidence would be taken up in the office of the Tahsildar, Boudh.

3. Section 46-B(2)(d) says, the Sub-Divisional Officer or when he is unable to attend any other gazetted officer not below the rank of a Sub-Deputy Collector authorized by him shall preside over and conduct the proceeding of the meeting. In the present . case, admittedly the Sub-Collector deputed the Tahsildar to preside over the meeting of no confidence. It is clarified by the Government Advocate that in the notification issued by the State Government, Tahsildars have been declared as Sub-Deputy Collectors. Therefore, the submission of learned Counsel for the petitioner that the meeting was not presided over by a competent officer has no basis.

4. Regarding the allegation that the provision of Section 46-B(2)(f-1) was not followed, it is to be noted that the said provision says that no 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. The provision, therefore, says that the resolution has to be proposed by at least one member and seconded by at least one member. Therefore, if the resolution is seconded by more than one member, it does not become illegal. Thus, when we find that there is no lacuna in the meeting convened, resolution passed and notices issued for the no confidence motion, petitioner is to be abided by the resolution of the no confidence motion with the spirit of a democratic leader and accordingly we dismiss the writ petition. As per our interim order passed on 30.1.2006, the no confidence motion if proceeded with, the result thereof may be declared, because we vacate the interim order.

A.K. Parichha, J.

5. I agree.