

(2001) 05 OHC CK 0022

In the Orissa High Court

Case No : Original Jurisdiction Case No. 4649 of 2000

Rajendra Nayak

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 08-05-2001

Acts Referred:

Orissa Panchayat Samiti (Conduct of Business) Rules, 1969 — Rule 5
Orissa Panchayat Samiti Act, 1959 — Section 19(2), 20A

Citation : (2001) 2 OLR 160

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : A.K. Baral, K. Ray, S.K. Nayak and B.K. Sahoo, R. Ch. Mohanty, R.K. Mohanty, D.K. Mohanty, N. Behuria, P.K. Rath and A.P. Bose, for the Appellant; A.G.A. (OPs. 1, 2 and 5) and A.N. Routray (OP. 3), for the Respondent

Judgement

P.K. Misra, J.—This writ petition has been filed by the Chairman, Basudevpur Panchayat Samiti, for quashing the Resolution of the Zilla Parishad so far as it relates to approval by the Zilla Parishad of the Annual Action Plan as per Annexure-1. It is stated in the petition that the Block Development Officer (in short, the "B.D.O.") on his own convened a meeting of the Panchayat Samiti and a resolution as per Annexure-6 was purportedly passed preparing the Annual Action Plan. It further appears that the present petitioner did not sign in the said resolution as according to him, the meeting had not been convened in accordance with the provisions of the Act and the Rules. Subsequently, in the meeting of the Zilla Parishad, the petitioner raised protest about the Annual Action Plan as submitted by the B.D.O. and the Zilla Parishad permitted the petitioner to file a revised Action Plan. It is not disputed that such revised Annual Action Plan was submitted by 19.4.2000. However, on 15.4.2000, the Zilla Parishad approved the Action Plan already submitted by the B.D.O. on the ground that no revised Action Plan has been submitted by 14.4.2000. This action of the Zilla Parishad has been impugned by the petitioner.

2. The learned counsel for the petitioner places reliance upon the provision

contained in Section 20-A of the Orissa Panchayat Samiti Act (in short, the "Act"), the relevant portion of which is quoted hereunder :"

"20-A. Powers and functions of the Chairman and Vice- Chairman of the Samiti -

(1) The Chairman of the Samiti shall-

(a) convene and conduct the meetings of the Samiti; and

(b) have power to inspect and supervise all works undertaken by the Samiti."

3. It has been contended on the basis of the aforesaid provision that a meeting of the Panchayat Samiti can be convened on the basis of the decision of the Chairman of the Panchayat Samiti and admittedly, the meeting which had been convened by the B.D.O. on 7.4.2000 was not on the basis of any decision of the Chairman of the Panchayat Samiti. Learned counsels appearing for the Intervenor and the State invited my attention to the provision of Rule 5 of the Orissa Panchayat Samiti (Conduct of Business) Rules, 1969, which is extracted hereunder :

"5. (i) At least, seven clear days notice of a meeting of the Samiti, shall be given to every member besides the member of the State Legislature as required by Sub-section (2) of Section 18 of the Act. The notice shall be issued under the signature of the Block Development Officer and served by post under certificate of posting. A copy of the notice shall also be published in the notice-board of the Samiti :

Provided that the notice for an emergency meeting may be served by post under certificate of posting or by such other method as may be deemed expedient. (ii) The notice shall set forth clearly and fully the time, place and date of the meeting and the business to be transacted there at.

(iii) Accidental failure of service shall not invalidate the proceedings of any meeting."

In the aforesaid rule, it is prescribed that the notices regarding the meeting of the Panchayat Samiti are to be issued to various members under the signature of the B.D.O. At this stage, it is necessary to notice Section 19(2) of the Act, which is extracted hereunder :

"(2) The Block Development Officer shall be the Executive Officer of the Samiti and subject to such rules as may be prescribed in this behalf, shall function under the control of the Chairman of the Samiti."

A perusal of the aforesaid provision makes it clear that the B.D.O. is the Executive Officer of the Samiti and he has to act on the basis of the direction issued by the Panchayat Samiti/Chairman. The provisions contained in the Rules cannot override the provisions contained in the Act. Moreover, Rule 5 only prescribes about the manner of sending notices. The decision to convene a meeting has to be taken by the Chairman of the Panchayat Samiti as laid down u/s 20-A(I) of the Act. It is thus obvious that the meeting dated 7.4.2000 had not

been convened properly as there was no direction by the Chairman to call such meeting.

4. The learned counsel appearing for the Intervenor as well as for the State also submitted that as no Action Plan had been submitted by 14th April, 2000, the Action Plan submitted by the B.D.O. had been approved by the Zilla Parishad. In this connection, it has been pointed out that in the meeting of the Zilla Parishad dated 11.4.2000 it had been decided that the Annual Action Plan should be submitted by 14.4.2000. Even if such a resolution was passed, it could not have been followed as such resolution was contrary to the provisions under the Panchayat Samiti Act relating to period of notice. Rule 5(1) of the Conduct of Business Rules contemplates that seven days' notice is required to be given for convening a meeting. Therefore, even if such a resolution was passed, giving effect to such a resolution would have been contrary to the provisions of the statutory Rules. In such view of the manner, the subsequent action of the Zilla Parishad on 15.4.2000 approving the Annual Action Plan which had been submitted by the B.D.O. pursuant to purported resolution of an improperly convened meeting of the Panchayat Samiti was illegal. Law is well settled that when the manner of doing a particular act is prescribed, such act must be performed in the manner prescribed, or not at all. In the present case, the meeting convened by the B.D.O. was not in accordance with the provisions prescribed under the Act as well as under the Rules and as such the so-called resolution relating to the approval of the Annual Action Plan was non est. In above view of the manner, the resolutions under Annexures-1 and 6 are quashed.

5. The question is as to whether the Plan submitted on 19.4.2000 should be implemented or not. Since more than a year has lapsed in the meantime, there may be necessity of reconsidering the question of Annual Action Plan. In such view of the matter, I direct that a fresh meeting of the Panchayat Samiti shall be convened before end of 15th June, 2001, and the Annual Action Plan for the year 2000-2001 shall be finalised in the said meeting and thereafter submitted before the Zilla Parishad for action in accordance with law.

The writ application is accordingly disposed of subject to aforesaid observation. There will be no order as to costs.