

(2011) 07 OHC CK 0019
In the Orissa High Court
Case No : Writ Petition (C) No. 10506 of 2011

Saraswati Mallik

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Orissa Panchayat Samiti Act, 1959 — Section 16(1), 18(2), 46B, 46B(2)

Citation : (2011) 2 ILR (Ori) 229

Hon'ble Judges : R.N. Biswal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.N. Biswal, J.—As per the writ petition, the petitioner was elected as Chairperson of Gudvella Panchayat Samiti in the last election held in the year 2007. She discharged her duties as per the provision of law contained in Orissa Panchayat Samiti Act (hereinafter referred as "the Act") and Rules framed there under. As she did not comply with the illegal demands of some Panchayat Samiti members, they forming an unholy combination tried their best to dislodge her from the office of Chairperson. They held a meeting on 8.4.2011 and passed a resolution to bring no confidence motion against the petitioner and made a requisition to the Sub-Collector, Bolangir to fix the venue date and time for holding such meeting. Accordingly, the Sub-Collector issued notice along with requisition on 15.4.2011 to all the Samiti members indicating that the meeting would be held on 26.4.2011 at 9 A.M. in the Block office meeting hall under Annexure-1 series. The petitioner seriously doubted the authenticity of the signatures found in the requisition as well as in the proceeding of the meeting. The notice was not accompanied by the proposed resolution containing the reasons to be moved in the no confidence motion against her.

2. It is the further case of the petitioner that as required under law, notice of the meeting regarding no confidence motion is to be sent to the members having right to vote, but, in the present case, notice has been issued to the Member of

Parliament Bolangir, MLA. Titilagarh and panchayat Samiti members along with all Sarpanchs. So, the notice is defective. Under such circumstances, she prays to quash the notice dated 15.4.2011 as illegal and arbitrary.

3. Opp. parties nos. 5 to 23, all of whom are members of the panchayat samiti, in their counter affidavit inter alia contended that notice was issued to all the members of the panchayat samiti in accordance with law. The requisition and the proposed resolution were enclosed with the notice. They claimed that all of them have signed in the proceeding of the meeting, requisition and the proposed resolution.

4. Op. party nos.2 to 4 in their counter affidavit contended that on receipt of the requisition along with copy of the proposed resolution for convening a special meeting in connection with no confidence motion against the petitioner, the Sub-Collector, Bolangir (Opp. party no. 3) in exercise of his power conferred u/s 46-B of the Act correctly issued the notice under Annexure-1 series. Out of total 26 members of Gudvella Panchayat Samiti, 19 members signed the requisition. After receipt of the requisition, opp.party no.3 requested the B.D.O., Gudvella Block to verify the genuineness of the signatures of the signatories found on the requisition and the proposed resolution by comparing the same with their signatures given in the proceeding book of the panchayat samiti. Accordingly, the signatures were compared and the B.D.O., Gudvella Block vide letter dated 13.4.2011 intimated the Sub-Collector, Bolangir that the signatures on the proposed resolution and the requisition were genuine.

5. Learned counsel for the petitioner submits that the notice sent to the members of the panchayat samiti does not contain the proposed resolution, as required u/s 46-B(2)(c) of the Act. He further submits that notice of meeting regarding no confidence motion has to be addressed only to the members having right to vote. In the present case, notice has been issued to the Members of Parliament Bolangir, MLA Titilagarh, Panchayat Samiti members along with all sarpanchs. So, the notice is defective. Furthermore, learned counsel for the petitioner submits that the signatures contained in the resolution as well as in the proceeding of the meeting dated 8.4.2011 appear to have been forged to the naked eye, but, the Sub-Collector, has not taken any steps to verify those signatures. So, according to him the notice deserves to be quashed.

6. Learned counsel for the opp.parties nos.5 to 23 submits that no proforma of the requisition or the proposed resolution has been prescribed under the Act or Panchayat Samiti Election Rules. In absence of such proforma, the requirement of Section 46-B(2)(c) would be satisfied, if they, are substantially complied with. The proposed resolution is there at page 11 of Annexure-1 series. So according to learned counsel for opp. parties 5 to 23, it cannot be said that the proposed resolution was not sent with the notice to the members of the panchayat samiti.

7. On perusal of Annexure-1 series, the copy of proposed resolution is found at page 11. As rightly submitted by learned counsel appearing for opp.parties 5 to

23 no proforma has been prescribed under the Act or the Panchayat Samiti Election Rules either with regard to requisition or the proposed resolution. In the decision in the case of Jagadish Pradhan and others Vs. Kapileswar Pradhan and others, 1987 (I) OLR 335 rendered by a Division Bench of this Court, on 24.3.1985 the petitioner therein and one Surendra Prasad Nayak, resolved expressing their want of confidence on the chairman and requested the Sub-Divisional Officer in the said resolution to take necessary action in the matter. The Vice-Chairman sent the said resolution on 27.3.1985 to the Sub-divisional Officer. On receipt of the same the Sub-divisional Officer gave notice on 3.4.1985 for a meeting to be held at the office of the panchayat samiti on 15.4.1985 at 11 A.M. with a copy of resolution dated 24.3.1985. It was held that in the resolution dated 24.3.1985, it was clearly mentioned about absence of confidence of the signatories on the Chairman. Merely because the resolution was not in a separate document, it cannot be said that the action thereupon becomes illegal. So in the present case, even if it is presumed that the so-called proposed resolution found at page 11 of Annexure-1 series, is not a proposed resolution in the strict sense of the term, since the requisition sent to the Sub-Collector indicates want of confidence of the signatories thereto on the petitioner, the notice cannot be held to be bad in law. No reason is required to be given on the requisition or the proposed resolution for initiating no confidence motion against the Chairman/ Chairperson as held by this Court in the case of Smt. Kanti Kumbhar Vs. State of Orissa and Another, .

8. Learned counsel appearing for opp. parties 5 to 23 further submits that as per Section 16(1) of the Act, every Block shall have a Samiti consisting of the members, namely:

- (a) the Chairman and the Vice-Chairman of the Samiti elected in the manner provided in Sub-section (3);
- (b) one member elected directly on the basis of adult suffrage from every constituency within the Block in the prescribed manner;
- (c) Sarpanchs of the Gram Panchayats situated within the Block;
- (d) every member of the House of the People and the Legislative Assembly representing constituencies which comprise wholly or partly the area of the Samiti; and
- (e) every member of the Council of States who is registered as an elector within the area of the Samiti.

Section 18(2) of the Act envisages that all the members of the Samiti specified in Sub-Section (1) of Section-16 shall have the right to vote at the meetings of the Samiti. Thus on a conjoint reading of both Section 16(1) and 18(2) of the Act, it is crystal clear that MP, M.L.A. Sarpanchs and elected Samiti Members being members of the Samiti have right to vote at the meetings of the Samiti. It has been clarified in the Circular dated 3.12.1994 of the Gov. under Annexure-A/4

that Sarpanchs, M.L.A and MP being members of the Panchayat Samiti have right to vote in the special meetings convened u/s 46-B of the Act. So, it is wrong to say that they have no right to vote in the meeting of want of confidence on the Chairperson. I am one with the submission of learned counsel appearing for opp.parties 5 to 23 in this regard.

9. As regards the allegation of forging of signatures on the requisition and the resolution passed in the meeting, as stated earlier, in their counter affidavit opp.parties 2 to 4 contend that after receipt of the requisition, opp.party no.3 vide letter dated 11.4.2011 requested the B.D.O. Gudvella Block to verify the genuineness of the signatures of the signatories found on the requisition and the proposed resolution by comparing the same with their signatures in the proceeding book of Gudvella Panchayat Samiti. Accordingly, the B.D.O. compared and verified the signatures and in his letter dated 13.4.2011 intimated the Sub-Collector, Bolangir that the signatures found on the proposed resolution and the requisition were genuine. This averment of opp.parties 2 to 4 has not been countered. Moreover, all the 19 signatories in the requisition and the proposed resolution, who have been arrayed as opp.parties 5 to 23 stated in the counter affidavit as stated earlier, that they have put their signatures on the requisition and the proposed resolution. Under such circumstances, it cannot be said that the signatures found on the requisition and resolution were forged.

10. In the above premises, the writ petition stands dismissed being devoid of merit. In view of dismissal of the writ petition, the Misc. Case Nos. 6383 and 7180 of 2011 stand disposed of. No cost.