
(1986) 09 OHC CK 0020

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1667 of 1986

Satyanarayan Patnaik

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 29-09-1986

Acts Referred:

Orissa Municipal Act, 1950 — Section 401(5), 402, 63, 64, 95

Citation : (1986) 2 OLR 647

Hon'ble Judges : L. Rath, J;G.B. Pattnaik, J

Bench : Division Bench

Advocate : P. Palit, J. Patnaik and A.K. Bhagat, for the Appellant; N.C. Panigrahi, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

L. Rath, J.—Whether a Municipal Council which has been suspended can be asked to show cause against a notice of supersession is the question which falls to be decided in this petition under Art. 226 of the Constitution of India. The petitioner who is a Councillor of the Parlakhemundi Municipality has filed this petition seeking quashing of the notice in Annexure-2 in which the Municipal Council has been asked to show cause as to why it should not be superseded on charges as stated in the notice.

2. The Municipal Council was suspended on 19-3-1986 by issuing a notification under the proviso to Sub-section (2) of Section 402 of the Orissa Municipal Act (for brevity, "the Act") and thereafter on 9.5.1986 the notice under challenge has been issued.

3. The sole contention raised by Mr. Palit, the learned counsel for the petitioner, is that a Municipal Council which has been suspended is unable to transact any business it having been kept in abeyance, and hence, since the Council cannot legally discharge any function, it cannot, as a corporate body submit any explanation to the notice issued for supersession According to him, once the

Municipal Council is suspended, the provisions of the Orissa Municipal Act to supersede the Municipal Council cannot operate since asking the suspended Municipal Council to show cause against supersession involves an inherent contradiction. The petitioner further contends that when the elected Municipal Council is suspended, a substitute for it is appointed to carry on the powers and duties of the Municipal Council. The Municipal Council being a body corporate, continues in perpetuity and hence the substituted authority discharging the powers and duties of the Municipal Council during its supersession is the Municipal Council. In view of the presence of this superimposed Municipal Council, the elected Municipal Council cannot be called upon to discharge any business which includes the function of showing cause against supersession. The petitioner on such submission submits that the notice of supersession must be quashed.

4. The submission of Mr. Palit, though attractive on the surface, yet does not stand a close scrutiny. The proposition that the person or persons appointed to exercise and discharge the powers and duties of a Municipal Council is/are the Municipal Council has no substance. A Municipal Council is established u/s 8 of the Orissa Municipal Act which is as follows :

"8. There shall be established for each Municipality a body to be called the Municipal Council which shall consist of such number of Councillors, not being more than thirty nor less than eleven, as the State Government may specify in the notification constituting the Municipality."

Section 10 provides that all Councillors of the Municipal Council are to be elected in the manner provided in the Act and the Rules. Section 9 makes the Municipal Council an incorporated body having a perpetual succession and a common seal. The person or persons who are vested with the powers and duties of the Municipal Council when the same is suspended or superseded is/are not elected and they are also not constituted as a Council Discharging the powers of an elected body temporarily does not make the person, so discharging the elected body itself.

5. Suspension of 3 Municipal Council does not cause its annihilation. Suspension as is commonly understood, means only a temporary cessation of duty of office, which is put in abeyance for the time being. It does not in any way interfere with the status of the person or the body so suspended which is only temporarily restrained from working. The status continues unabated. It only means , a temporary deprivation of one's office or position, a temporary abrogation or interruption from work throughout which period the person or body concerned continues to hold the office but during which period somebody else is merely assigned the duty to discharge the authority exercised by him or it previously. The matter was also considered by a decision of this Court in 1944 CLT 404 (Biswanath Pradhan v. State of Orissa and another) where the question arose in relation to the suspension of a Sarpanch It was held :

"Though as a result of the suspension the person concerned may not for the time being be entitled to continue to function as a Sarpanch or a Naib-Sarpanch, but the suspension has not the effect of removing him from his office."

6. The supersession of Municipal Council is provided for u/s 402 of the Act where as Section 401 stipulates for its dissolution and reconstitution. The provision for suspension of a Municipal Council is as provided in the proviso to Sub-section 2 of Section 402, Section 402(5) lays down that during the period of supersession or suspension of the Municipal Council/the provisions of Sub-section (5) of Section 401 shall apply, as far as may be, regarding the exercise and discharge of all or any of the powers and duties of the Municipal Council Section 401(5) is as follows:

"(5) During any interval between the dissolution and the reconstitution of a Municipal Council directed under Sub-section (1) all or any of the powers and duties of the Municipal Council and its Chairman may be exercised and discharged, as far as may be, and to such extent as the State Government may determine by such person or persons as the Government appoint in that behalf and any such person who is not a District Magistrate or Sub-divisional Officer may, if the State Government so direct, receive such payment for his services from the Municipal Funds as may be determined by them."

While suspending the Municipal Council the Government issued a notification on the same day, i. e., 19-3-1986, purported to be issued u/s 401(5) of the Act, inter alia, to the following effect:

XX XX XX Now, therefore, in exercise of the powers conferred under Sub-section (5) of the said section of the aforesaid Act, the State Government do hereby appoint that Sub-Divisional Officer, Parlakhemundi, to exercise the powers and discharge the duties of the said Council as its Chairman with effect from the 20th March, 1986 until further orders.

By order of the Governor, K.C. Misra, Director of Municipal Admn-cum-Joint Secretary to Government."

Thus, the Subdivisional Officer was appointed as an officer to discharge the powers and duties of Municipal Council. Evidently the Sub-divisional Officer does not become the Municipal Council thereby The matter was also considered by a Division Bench reported in 1980(50) CLT 527 (Padma Charan Samantasinghar v. The Registrar of Co-operative Societies, Bhubaneswar and others) where the case arose in relation with the provisions of the Orissa Co-operative Societies Act, 1962 Section 32 of the Orissa Co-operative Societies Act deals with supersession of the society. Section 32(1) authorises the Registrar to supersede a society and appoint a committee, one or more Administrators or any other society to manage the affairs of the society during the period of supersession. Section 32(2) states that the Committee or the Administrator or the Administrators, or the society so appointed, shall have the powers to exercise all or any of the functions of the committee or of any officer or the society, etc. and

shall be deemed for all purposes of the Act and the Rules and the bye-law to be the committee of the society. Section 32(7) authorised the Registrar to suspend the Committee of Management of the Society either before or after giving opportunity to the Committee to state objections regarding supersession, and stipulates that he may make such arrangements as he thinks proper for the management of the affairs of the Society during the period of suspension of the Committee. It is to be noticed that where as Section 32(2) of the Orissa Co-operative Societies Act makes the Committee or the Administrator or Administrators, or the Society so appointed to manage the affairs of the Society to be deemed, for all purposes of the Act and the Rules and the bye-laws, to be the Committee which is superseded, there is no such deeming provision in the Orissa Municipal Act so far as Section 401(5) is concerned. The question before Their Lordships was whether the Administrator or a Committee of the Administrators appointed u/s 32(2) of the Orissa Co-operative Societies Act can claim itself to be the elected committee as was contended by the petitioner in that case. It was urged by him that since he had been appointed as member of the committee of Administrative set-up for the Bank after supersession and some times thereafter the committee of Administrators was reconstituted by dropping the petitioner therefrom, compliance with the provisions of Section 32(1) of the Orissa Cooperative Societies Act, namely, issuing of notice and following the same procedure for supersession as is required to be made in the case of an elected council, was necessary to be observed before the Committee was reconstituted and he was dropped. Negating the contention it was held that :

""Sub-section (2) does not have the effect of converting the Committee of Administrators to a Committee in terms of the bye-laws. Sub-section (1) must be confined to the "Committee" in which under the Act or the bye-laws, the management of the affairs of the Society vests. The Administrator or the Committee of Administrators is not such a committee. The effect of Sub-section (2) is only in regard to exercise of powers and the deeming provision therein cannot be extended to make the Committee of Administrators a Committee referred to in Sub-section (1) and in terms of the definition in Section 2(c) of the Act. The first contention advanced by Mr. Rath for the petitioner must, therefore, fail."

7. The reasonings as above apply with full vigour to the case in hand. It is thus not correct that simply because some person or persons are assigned the powers and duties of the Municipal Council to be discharged during the period of suspension, the Municipal Council itself ceases to have legal existence and cannot be called upon to answer the charges levelled against it for supersession. There is no duality of the , Municipal Council. The one and the only one Municipal Council is the elected Council which continues during suspension but is, so to say, in a state of suspended animation.

8. The next question is whether since the powers and duties of the Municipal Council are to be exercised by the Subdivisional Officer, the Municipal Council can

be legally called upon to show cause. It is contended by Mr. Palit that the Municipal Council, to submit the explanation, must act as a body which function cannot be discharged since it no longer can behave as a body. It cannot direct the Executive Officer of the Municipality to convene a meeting for the purpose of discussing the super-session notice or pass a resolution regarding the reply to be sent. On such premises, it is submitted, that submission of the reply to the show cause notice is a fact which is physically not possible to be performed.

9. It is true that all actions of a Municipal Council is possible to be taken only through a resolution passed by the Municipal Council at a meeting and not otherwise. Section 95 of the Act runs as follows :

"Powers of a Municipal Council to be exercised by resolution : The powers, duties and functions of a Municipal Council may be exercised and shall be performed or discharged by a resolution passed at a meeting of the Municipal Council and not otherwise".

(The underlining is ours)

It is of relevance to note that while u/s 410(5) of the Act, the powers and duties of Municipal Council may be directed to be discharged by person or persons appointed under that section, yet nothing is stated regarding the functions of the Municipal Council. It would logically follow that even during the period of supersession or suspension, the Municipal Council is left with its functions in fact in so far as such functions are separate and independent of its powers and duties. It may be stated that beyond the powers and duties of a Municipal Council there is no other function which has been assigned to it. Mr. Palit relies on the title of Chapter 9 of the Act which reads, the "functions of the Municipal Council and its executive". However the chapter does not define what the functions of the Municipal Council are but merely prescribes as to how the functions are to be discharged. Since the legislature cannot be said to have utilised a word superfluously and unnecessarily, the word "function" in Section 95 must be held to have been intentionally used with a specific purpose. Though "function" within its ordinary ambit would take both powers and duties, yet bereft of them it would mean such inalienable or inherent functions of the Municipal Council which would not relate to its power and duties. One such function would certainly be showing cause against a notice of supersession. Such a function evidently cannot be assigned to a person or persons appointed u/s 401(5) which authorises the person or persons appointed under it to exercise only those powers and duties which are assigned to him/them and not all the powers and duties of the Municipal Council. Thus, the functions of showing cause against supersession is not one which is in any way abrogated or kept in abeyance during the period of suspension of the Municipal Council.

10. The further question is how such function of the Municipal Council is to be exercised when the powers, duties and functions of the Council are to be exercised through resolutions. There is no bar in the Act for a suspended

Municipal Council to meet and transact the business of resolving regarding the reply to be sent in response to the notice of supersession, Sections 63 and 64 of the Municipal Act are as follows :

"63. Ordinary Meetings : The Councillors shall meet for the transaction of business at their office, or at some other convenient place, at least once in every month, and as often as a meeting shall be called by the Chairman or in his absence, by the Vice-Chairman.

64. Meeting or requisition by Councillors-(1) The Chairman or in his absence the Vice-Chairman shall call a special meeting on a requisition signed by not less than One-third of the total number of Councillors."

Rule 8 of the Municipal Rules is also to the following effect:

"The Chairman shall send to every Councillor at least three clear days" notice of all meetings except adjourned meeting : provided in case of any sudden emergency, the Chairman or in his absence the Vice-Chairman shall be competent to call a meeting at shorter notice."

The authority to convene meeting of the Municipal Council is the Chairman or in his absence the Vice-Chairman. The meeting may be convened either in the Municipal Office or at some other convenient places. It is not physically impossible for the Chairman of the suspended Council to convene a meeting at some other places or even in the Municipal Office to transact the business of showing cause. The stand of the State Government in its counter affidavit is also to the same effect that the Municipal law does not debar the Councillors to Submit their explanation or objection either individually or jointly.

11. In view of our conclusion that the function of the Municipal Council regarding showing cause against notice of supersession continues in it and that such function is to be discharged by a resolution, it follows as a necessary corollary that the Executive Officer of the Municipality would be bound to implement such resolution of the Municipal Council i. e., to send the reply to the Government, For the very same purpose the Executive Officer would be also under an obligation to comply with the direction of the Chairman or Vice-Chairman, as the case may be, to allow the holding of the meeting in the Municipal Office if such meeting is convened with notice to him for the purpose of transacting that particular business. The Executive Officer would also have the duty to make available all documents and records to the Municipal Council in its meeting so as to facilitate its consideration of the notice of supersession and draft the requisite reply.

12. By order dated 30-7-1986 in Misc. Case No 2330/86, operation of the notice for supersession had been stayed." The notice had directed the Chairman, Vice-Chairman and Councillors to show cause against the supersession within fifteen days from the date of the receipt of the letter. The period stipulated having expired, it would be necessary to call upon the Councillors again to submit the show cause. We would, thus direct the opposite parties to call upon, within one

month, individually the Chairman, Vice-Chairman, and all the Councillors to submit reply to the notice in Annexure-2 within a time to be fixed by the State Government.

13. In the result, the writ application has no merit and the same is dismissed with the aforesaid observations. Let a writ be issued to the State Government. There shall be no order as to costs.

G.B. Pattnaik, J.

14. I agree.