

(2006) 06 OHC CK 0020
In the Orissa High Court
Case No : Writ Petition (C) No. 10685 of 2004

Shanti Dei and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 21-06-2006

Acts Referred:

Orissa Grama Panchayat Act, 1964 — Section 25(2)
Orissa Grama Panchayat Rules, 1968 — Rule 227, 228

Citation : (2006) 2 OLR 470

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

Bench : Division Bench

Advocate : Niranjana Singh, M.R. Dash and B. Das, for the Appellant; Standing Counsel (for O.Ps. 1-3), B.M. Patnaik, N.P. Patnaik and B.C. Swain, (for O.P. 4), for the Respondent

Judgement

A.K. Parichha, J.—Petitioners are all Ward Members of Bajapura Grama Panchayat under Mahanga Block in the district of Cuttack. Their grievance is that the Sarpanch of that Panchayat did not convene any meeting of the Gram Panchayat or Pali Sabha in spite of their repeated demands, as a result of which the funds received from 11th Finance Commission and other sources could not be utilised and developmental work of the Panchayat could not be undertaken. They claim that they made representation to the Collector, Cuttack and in spite of direction of the Collector and District Panchayat Officer; the Sarpanch neither called any meeting nor attended to any developmental work. So, finding no other way, they filed G.P.Misc. Case No. 21 of 2003 before the Collector, Cuttack demanding disqualification of Sarpanch under the provision of Section 25(2)(b) of the Orissa Grama Panchayat Act (in short, "the Act") pleading inter alia that the Sarpanch failed to attend four consecutive meetings from January, 2003 to April, 2003. The Sarpanch also appeared before the Collector and demanded disqualification of the petitioners on the ground that petitioners failed to attend four consecutive meetings of the Grama Panchayat and filed G.P.Misc. Case No. 31 of 2003. Learned Collector disposed of those Misc. Cases on 19.11.2003

directing both the parties to call and attend the meetings and to run the affairs of the Panchayat smoothly. But instead of calling the meetings, the Sarpanch-opposite party No. 4 preferred a writ petition being W.P.(C) No. 1362 of 2003 and petitioners also preferred W.P.(C) No. 13627 of 2003 before this Court. This Court while disposing of those writ petitions, quashed the above said order of the Collector, Cuttack and directed the Collector to dispose of the matter afresh in accordance with law but expeditiously. Both parties accordingly appeared before the Collector, Cuttack, who after hearing the parties and perusing the resolution book of the office of Sarpanch, Bajapura Grama Panchayat passed the impugned order disqualifying the petitioners as Ward Members of the said Grama Panchayat in exercise of authority u/s 25(2)(b) of the Act on the ground that they failed to attend consecutive Grama Panchayat meetings held on 16.11.2002, 27.12.2002, 14.1.2003 and 28.2.2003. That order of the Collector is now under challenge.

2. Learned counsel for petitioners stated that learned Collector, Cuttack while passing the impugned order not only failed to appreciate the meaning and spirit of statutory provision in Section 25 (2)(b) of the Act and Rule 228 of the Grama Panchayats Rules, but also omitted to afford opportunity to the petitioners to counter/rebut the evidence which was relied upon. Learned counsel also alleged that although learned Collector recorded order of disqualification against the petitioners in G.P.Misc. Case No. 31 of 2003 he failed to record any finding on the allegations of the petitioners in G.P.Misc. Case No. 21 of 2003.

3. Learned Standing Counsel appearing for opposite party Nos. 1 to 3 supported the impugned order. Mr. B.M.Patnaik, learned Counsel appearing for opposite party No. 4 also supported the impugned order claiming inter alia that when despite service of notice petitioners failed to attend four consecutive meetings of the Grama Panchayat, they are liable for disqualification u/s 25 (2)(b) of the Act.

4. Section 25 (2)(b) of reads thus : "Disqualification for membership of Grama Panchayat -

(1) XXX XXX XXX (2) A Sarpanch or any other member of a Grama Panchayat shall be disqualified to continue and shall cease to be a member if he

(a) xxx xxx xxx (b) has failed to attend three consecutive ordinary meetings held during a period of four months commencing with effect from the date of the last meeting which he has failed to attend; or

A close reading of this sub-section would show if a Sarpanch or Ward Member fails to attend three consecutive meetings of the Grama Panchayat within a period of four months despite due intimation and notice and without reasonable excuse would cease to be a member. Rules 227 and 228 of the Grama Panchayat Rules speak about the manner of service of notice. These rules read thus:

227. Notice of meetings - (1) At least seven clear days" notice of ordinary meeting of Grama Panchayat shall be given.

(2) A copy of the notice shall be forwarded to the concerned Block Development

Officer.

228. (i) The notice of the meeting of the Grama Panchayat shall be served on every member.

(ii) The Secretary after taking approval of the Sarpanch shall circulate the notice in a Notice Book which shall be signed by each of the Ward Members;

Provided that on the failure, neglect or refusal by the Secretary to circulate the notice of the meeting on the members, the Sarpanch shall cause the notice to be served in any other manner.

(iii) In case of absence of any Ward Member, the notice shall be sent to him under certificate of posting.

(iv) Accidental failure of service of notice in any manner shall not invalidate the proceedings of any meeting.

Rule 227 prescribes for 7 clear days" notice to the members preceding the date fixed for ordinary meeting. It has already been held by this Court in various cases that such "clear seven days" would exclude the date of issue of the notice and the date of the meeting. Rule 228(iii) makes it mandatory for the Secretary to take approval of the Sarpanch and to circulate the notice in a notice book to all the Ward Members and obtain signatures of the Ward Members on the notice book as a token of proof of receipt of notice by such members. The proviso says that if the Secretary fails, neglects or refuses to cause service of the notice in the above said manner, the Sarpanch shall cause the notice to be served on the concerned Ward Member in any other manner. Sub-rule (iii) says that in case any Ward Member is found absent then notice shall be sent to him Under Certificate of Posting. Learned Standing Counsel offered an argument that absence of the Ward Member in Sub-rule (iii) means absence of Ward Member in the meeting. A close and conjoint reading of Sub-rules (ii) and (iii) of Rule 228 would indicate that the aforesaid argument is untenable. The words "absence of any Ward Member" in Sub-rule (iii) would mean absence from his ordinary place of abode or from the places where he is supposed to be available. The purpose of Sub-rule (iii) is to keep proof that notice was sent to a member who was found absent when the notice book was circulated or notice was sent by any other mode. In essence Rule 228 says that service of notice about the meeting on the Ward Member is to be effected through a notice book by the Secretary of the Grama Panchayat and if the Secretary fails, neglects or refuses to effect such service then only other modes of service including notice Under Certificate of Posting can be taken recourse to. The impugned order shows that learned Collector did not examine as to whether notices of the alleged meeting were sent to the petitioners through notice book or if the Sarpanch decided to send the notices through Under Certificate of Posting and the reason thereof. It is seen from the impugned order that learned Collector simply perused the peon book, notice book and formed his conclusion that petitioners failed to attend the meetings in spite of notice. It is worthwhile also to note that although petitioners made

similar allegation against the Sarpanch demanding her disqualification in G.P.Misc. Case No. 21 of 2003, no finding was recorded on those allegations.

5. Disqualification noted in Section 25(2)(b) of the Act is drastic in nature as it contains provision to oust a people's representative from his office. So while deciding such matter of disqualification, authorities under the statute should be careful to avoid casual approach. The foregoing discussion would show that learned Collector, Cuttack passed the order without examining about proper service of notice on the petitioners in the light of Rule 228 of the G.P.Rules. Learned Collector also omitted to record any finding on the allegations of the petitioners against the Sarpanch.

6. For all these reasons, the impugned order is unsustainable and is accordingly quashed. Learned Collector, Cuttack is directed to rehear the matter and pass a reasoned order in both the G.P.Misc. Cases strictly according to law. Keeping in view nature of the dispute, we direct the Collector to dispose the said cases within six weeks from the date of receipt of this order. To save the proceedings from delay we direct both the parties to appear before the Collector on 23.6.2006 and we further direct the petitioners to produce a certified copy of this order before him on that date. We observe that if the parties or any of them intend to produce or rebut any evidence, then such opportunity be provided, but failure of any party to adduce or produce such evidence within the time granted by Collector will be end of the matter and no further opportunity be granted.

7. Writ petition is accordingly disposed of.

P.K. Tripathy, J.

8. I agree.