
(2005) 10 OHC CK 0027
In the Orissa High Court
Case No : Writ Petition (C) No. 1740 of 2005

Shri Hindu Pradhan

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 07-10-2005

Acts Referred:

Mysore Town Municipalities Act, 1951 — Section 36
Orissa Grama Panchayat Act, 1964 — Section 24(1), 24(2)

Citation : (2005) 100 CLT 673

Hon'ble Judges : Pradip Mohanty, J; P.K. Tripathy, J

Bench : Division Bench

Advocate : S.K. Das, S. Swain, S.R. Subudhi and N.N. Mohapatra, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Pradip Mohanty, J.—In the instant Writ Application the petitioner challenges the notice dated 10.1.2005 issued by the Sub-Collector, Baliguda and the consequential order dated 9.2.2005 passed by Collector, Kandhamal (Opp. Party No. 2) as illegal, arbitrary and contrary to the provisions of the Orissa Grama Panchayat Act.

2. The brief fact of the case is that the petitioner was the elected Sarpanch of Barakhama Grama Panchayat in the district of Kandhamal. On 11.1.2005, petitioner received a notice dated 10.1.2005 from the Sub-Collector (Opp. Party No. 3) convening a meeting to consider the "no confidence motion" against him to be held on 25.1.2005 in the office of the above Grama Panchayat. On 25.1.2005 a special meeting was held at 11 a.m. The petitioner and all the Ward Members were present in the said meeting. The meeting was presided over by the Revenue Officer. The no confidence motion was passed with majority. The Presiding Officer of the meeting sent a copy of the proceeding to the Sub-Collector, Baliguda. Thereafter, the final order was notified by the Collector (Opp. Party No. 2) in exercise of powers u/s 24(1) of the Orissa Grama Panchayat Act,

1964 (for short "the Act").

3. Mr. Das, Learned Counsel for the petitioner contended that clear 15 days notice, as contemplated u/s 24(2)(c) of the Orissa Grama Panchayat Act was not given in the context of no confidence motion. In support of his contention, he relied upon the decision in *Sarat Padhi Vs. State of Orissa and Others*, . On the other hand, Learned Additional Government Advocate submitted that clear 15 days notice is directive in nature and in absence of any prejudice proved, the motion relating to the "no confidence" cannot be interfered. In support of his stand, he relied upon the decision in *K. Narasimhiah Vs. H.C. Singri Gowda*, .

4. This Court in the case of *Sarat Padhi* (supra) held that the Scheme of the notice contemplated u/s 24(2)(c) be divided into three parts; (i) requirement of giving the notice, (ii) fixing the margin of time between the date of the notice and the date of the meeting, and (iii) service of notice on the members. The first two parts namely, (i) & (ii) are mandatory in nature. In Other words, if there is any breach of any of these two conditions, the meeting will be invalid without any question of prejudice. But the third requirement is only directory.

5. In the case of *K. Narasimhiah* (supra), the factum for consideration before the Apex Court was whether three clear days notice to the councillors relating to a motion of no-confidence against the Municipal President was mandatory under the Mysore Town Municipalities Act. Referring to the provision u/s 36 of that Act and the language employed therein that irregularity in service of notice to councillors or members was not to invalidate a resolution of the Municipal Council or any committee appointed under that Act, their Lordships held that the term "giving three clear days notice" was directory and not mandatory. So far as the matter relating to service of notice against the President of the Council, their Lordships held that there was clear 15 days notice given to him. Therefore, the ratio of that case may be applicable where there has been irregularity in serving notice on any member in view of the provision u/s 24(2)(e). But the legal position is not so when it relates to a Sarpanch or Naib Sarpanch against whom the no-confidence motion is undertaken. In that context, the ratio decided in the case of *Sarat Padhi*, (supra), being a direct decision of the Full Bench of this Court, we respectfully follow the same view.

6. Coming to the instant case, the notice was issued on 10.01.2005 and the meeting was held on 25.01.2005. Therefore, there was no clear 15 days gap between issuance of the notice and holding of the meeting. Since the gap between the date of issuance of the notice and the date of the meeting was less than 15 days, the Full Bench of this Court held that the notice was bad in law. In the instant case, as already mentioned earlier, the notice was issued on 10.1.2005 and the meeting was held on 25.1.2005. Therefore, there was no clear 15 days gap.

7. For the reasons discussed above, we quash the impugned notice, Annexure-1, as well as the consequential order passed under Annexure-2 and accordingly

allow the Writ Petition. There will be no order as to costs.

P.K. Tripathy, J.

8. I agree.