

(2006) 03 OHC CK 0025
In the Orissa High Court
Case No : Writ Petition (C) No. 4980 of 2005

Shri Paresh Nath Kuanr

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 09-03-2006

Acts Referred:

Orissa Grama Panchayat Act, 1964 — Section 11, 11(1), 14, 24, 24(2)

Citation : (2006) 101 CLT 617 : (2006) 2 OLR 390

Hon'ble Judges : Pradip Mohanty, J; I.M. Quddusi, J

Bench : Division Bench

Advocate : K.P. Mishra, J.K. Khandayatray and S. Mohapatra, for the Appellant; A.G.A. (for O.P. Nos. 1, 2 and 3), A.K. Rath, A.K. Panda, P.K. Majhi, A.K. Nath, D. Panda, D.P. Dhal, G.R. Mohanty, A.K. Parida and A.K. Budhia and B.N. Mohanty, S.N. Sharma, S.C. Pradhan and G.K. Behera, (for Intervenors), for the Respondent

Final Decision : Dismissed

Judgement

I.M. Quddusi, J.—The petitioner, who is the Sarpanch of Madanpur Grama Panchayat in the District of Keonjhar, has filed this Writ Petition against the impugned notice dated 4.4.2005 issued by the Sub-Collector, Anandapur u/s 24(2) of the Orissa Grama Panchayat Act, 1964 (hereinafter referred to as "the Act"). Further, he has prayed for declaring Section 24 of the Act as ultra vires the Constitution of India.

2. The brief facts of the case are that the petitioner was elected as Sarpanch of Madanpur Grama Panchayat in the last Panchayat election held in March, 2002. The elected ward members convened a meeting presided over by the Naib Sarpanch on 18.3.2005. In that meeting, 16 ward members were present including the Naib Sarpanch. They passed a resolution to bring "No Confidence Motion" against the petitioner and forwarded the same along with an application signed by all the 16 persons to the Sub-Collector with request to take steps to execute the proposed no confidence motion against the petitioner which was

received in the office of the Sub-Collector, Anandapur on 4.4.2005.

3. In the meeting dated 18.3.2005, it was resolved by the 16 ward members including the Naib Sarpanch that a no confidence motion would be moved against the Sarpanch. The reason shown was that he was doing illegal acts which were prejudicial to the interest of general public. The description of such acts (as per the translated copy supplied by the petitioner) is as under:

1. When there is provision of monthly meeting in the G.P. but the Sarpanch did not call the same deliberately for last five months.

2. Without doing Palli Sabha for developmental works of Grama Panchayat, doing substandard works through false Palli Sabha.

3. The Sarpanch deliberately not apprising the Ward Members about earning and expenditure of the Grama Panchayat.

4. Does not call Palli Sabha and Grama Sabha.

5. Suppressing the files of hundreds of beneficiaries of Indira Abas Yojana in Panchayat, making hindrance in drawal of their money.

6. High illegality in distribution of P.O.S. materials. While distributing kerosene 3 times signature has been obtained for one month quota. All these materials are being grabbed through own cousin brother.

7. In 2003-2004 withdrawing the money of Eleventh Finance Commission, invested in his own work for approximately six months, after six months purchasing very substandard dresses which were distributed among school children.

8. According to the Rule of Tenth Finance Commission, it is only for cement, concrete and building roads, but is completely misappropriated the money.

9. In most of the time manhandling the members of the wards.

4. Thereafter the Sub-Collector, Anandapur issued orders on 5.4.2005., According to Order No. 2016 dated 5.4.2005, Sri Maheswar Swain, O.A.S., Tahasildar, Anandapur was authorized to preside over, conduct and regulate the proceedings of the special meeting of Madanpur Grama Panchayat scheduled to be held on 23.4.2005 at 11 A.M. in Madanpur Grama Panchayat Office for discussion about want of confidence proposed against the Sarpanch. By the said order dated 5.4.2005, the Sub-Collector, Anandapur directed Sri Maheswar Swain, Tahasildar to conduct the special meeting of Madan Grama Panchayat on 23.4.2005 at 11 A.M. Sri Bichitra Kumar Kar, G.P.E.O., Anadapur was directed to assist him vide order dated 5.4.2005. He was directed to spare one ballot box available in the Block office for the above purpose. Copies of the said order dated 5.4.2005 were sent to the Collector, Keonjhar/District Panchayat Officer, Keonjhar/Block Development Officer, Ghasipura/Anandapur/Sub-Divisional Police Officer, Anandapur/C.I. of Police, Anandapur/ O.I.C., Ramachandrapur P.S. and the

Executive Officer, Madanpur Grama Panchayat, But on 21.4.2005, this Court directed the Collector, Keonjhar not to notify the result of the no confidence motion without leave of this Court and, therefore, the result of the no confidence motion has not been declared so far, although the meeting was conducted according to the above mentioned directions of the Sub-Collector by the Tahasildar, Anandapur on the scheduled date and time.

5. Learned Counsel for the petitioner has raised two contentions. The first contention is that the Sub-Collector received the requisition dated 4.4.2005 on 5.5.2005 along with the resolution dated 18.3.2005 but failed to comply with the provision of Clause (c) of Sub-section (2) of Section 24 of the Act in which it has been provided that the notice on the requisition with a copy of the requisition and of the proposed resolution shall be given to all members holding the office on the date of such notice at least fifteen clear days before the date fixed by him. But it is revealed from the record that the notice was not sent to all the members and there was no gap of fifteen days between the scheduled date of the meeting and the date of service of the notice. The second contention raised by the learned Counsel for the petitioner is that the provisions of Section 24 of the Act are ultra vires the Constitution since the Sarpanch is not elected by the ward members and as such the ward members have no right to raise no confidence motion against the Sarpanch.

6. In respect of the first contention raised by the Learned Counsel for the petitioner, it is necessary to peruse the provisions of Clause (c) of Sub-section (2) of Section 24 of the Act, which is reproduced hereunder:

(c) the Sub-divisional Officer on receipt of such requisition shall fix the date, hour and place of such meeting and give notice of the same to all the members holding office on the date of such notice along with a copy of the requisition and of the proposed resolution, at least fifteen clear days before the date so fixed;

7. In the instant case, perusal of the record shows that the notice was issued by the Sub-Collector along with the copy of the requisition of the proposed resolution on 5.4.2005 fixing the date of meeting on 23.4.2005 and, as such, there was a gap of more than fifteen clear days between issuing notice and the date fixed for the meeting. Besides this, with regard to non-receipt of copy of the requisition and proposed resolution dated 18.3.2005 by two ward members, namely, Smt. Baijanti Rout and Smt. Kandhei Patra, as stated in the additional affidavits filed by them, the record shows that both the members had participated in the meeting and voting and they did not raise any objection at that time. Therefore, the point raised for the first time before this Court by filing the affidavits regarding non-receiving of copy of the requisition and proposed resolution appears to be an after thought. When both the members had participated in the meeting and had exercised their franchise without raising any objection at any point of time the plea taken for the first time before the Court is not sustainable in the eye of law.

8. Learned Counsel for the petitioner was unable to apprise this Court about the name of the member who did not receive the notice before fifteen clear days of the meeting. Under the statute it has nowhere been provided that the period of fifteen clear days notice shall be between the date of actual service of notice and the date of meeting. A Full Bench of this Court in the case of *Sarat Padhi Vs. State of Orissa and Others*, has held that the duty to issue the notice and fix the margin of clear fifteen days between the date of issuing the notice and the date of the meeting are mandatory but failure by any member to receive the notice at all or allowing him less than fifteen clear days before the date of meeting will not be rendered the meeting invalid and this requirement is only directory. The relevant part of the said judgment is quoted hereunder:

The scheme of the notice contemplated u/s 24(2)(c) may 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. I am of the view, which is also conceded by the Learned Advocate General, that the first two parts, namely, the duty to issue the notice and the margin of clear 15 days between the date of the notice and the date of the meeting, are mandatory. In other words, if there is any breach of these two conditions, then the meeting will be invalid without any question of prejudice. But the third condition, i.e., the mode of service or the failure by any member to receive the notice at all or allowing him less than 15 clear days before the date of the meeting, will not render the meeting invalid. This requirement is only directory. This is also based on a sound public policy as in that event any delinquent Sarpanch or Naib Sarpanch can frustrate the consideration of the resolution of non-confidence against him by tactfully delaying or avoiding the service of the notice on him and thus frustrate the holding of the meeting. The legislation has also accordingly taken care to provide in unequivocal terms a provision to obviate such contingencies by incorporating Clause (e) to Sub-section (2) of Section 24.

The contention of the Learned Counsel for the petitioner is that the fifteen days gap should be counted not from the date of issue of notice but from the date of actual service of such notice. If the notice is received by a member and on the date of receipt of notice there is less than fifteen clear days gap, it cannot be said that there is substantial compliance of the provision of Clause (c) of Sub-section (2) of Section 24 of the Act. In view of the principle laid down by this Court, as stated above, this contention has to fail. In the case of *Sarat Padhi v. State of Orissa and Ors.* (supra) the Full bench of this Court was also of the view that the petitioner having participated in the meeting without any protest or objection is estopped from challenging the validity of the meeting.

9. With regard to the second contention raised by the Learned Counsel for the petitioner to declare Section 24 of the Act as ultra vires the Constitution, the same has already been set at rest by a Division Bench decision of this Court in *Bhagabat Sahoo Vs. Collector and Others*, . It has been held therein that Section

24 of the Act is *pari materia* to Section 14 of the U.P. Panchayat Raj Act in which the members of Grama Panchayat are empowered to remove the Pradhan of Grama Sabha by moving a motion of no confidence. The same has also been held to be *intra vires* by the Hon"ble Apex Court in the case of *Ram Beti Vs. District Panchayat Raj Adhikari and Others*, . The relevant portion of the decision of the Hon"ble Apex Court is quoted hereunder :

The Learned Counsel for the petitioners have also invited our attention to Section 11 of the Act wherein provision is made regarding meetings and functions of Grama Sabha and it is prescribed that every Grama Sabha shall hold two general meetings in each year-one, known as kharif meeting, to be held after harvesting of the kharif crop and other, known as rabi meeting, to be held after harvesting of the rabi crop. The Learned Counsel have pointed out that under the first proviso to Section 11(1) a meeting of the Grama Sabha can also be requisitioned by not less than one-fifth of the number of the members. It has been urged that there is no difficulty in moving a motion of no-confidence in any of the two general meetings of the Grama Sabha which are required to be held in each year or by requisitioning an extraordinary general meeting of the Grama Sabha for that purpose. It is no doubt true that u/s 11(1) of the Act provision is made for holding of two general meetings of the Grama Sabha in each year as well as for requisitioning of a meeting by one-fifth of the members. But the Legislature, in its wisdom, thought it proper that the matter of removal of a Pradhan, instead of being considered at the meeting of the Grama Sabha, should be considered by the members of the Grama Panchayat. The considerations which weighed with this Court for upholding the validity of Sub-section (2) of Section 87-A of the U.P. Municipalities Act, 1916 relating to the removal of the President of a Municipal Board in *Mohan Lal Tripathi Vs. District Magistrate, Rae Bareilly and others*, are, in our opinion, also applicable to the removal of the Pradhan of a Grama Sabha. Although u/s 14 of the Act the power of removal of a Pradhan is conferred on the members of the Grama Panchayat, which is a smaller body than the Grama Sabha, but the members of the Grama Panchayat, having been elected the members of the Grama Sabha, represent the same electorate which has elected the Pradhan. The removal of a Pradhan by two-thirds members of the Gram Panchayat who are also elected representatives of the members of the Grama Sabha is, in fact, removal by the members of the Grama Sabha through their representatives. Just as the Municipal Board is visualized as a body entrusted, with the responsibility to keep a watch on the President, whether elected by it or by the electorate, so also the Grama Panchayat is visualized as a body entrusted with the responsibility to keep a watch on the Pradhan who is not elected by it and is elected by the members of the Grama Sabha. An arbitrary functioning of a Pradhan in disregard to the statute or his acting contrary to the interests of the electorate could be known to the members of the Grama Panchayat only and, in the circumstances, it is but proper that the members of the Gram Panchayat are empowered to take action for removal of the Pradhan, if necessary. It is no doubt true that in Section 11 of the Act provision is made for holding two general

meetings of the Grama Sabha in each year and for requisitioning of a meeting of the Grama Sabha by one-fifth of its members. But, at the same time, we cannot lose sight of the fact that the number of members of the Grama Sabha is also fairly large. It would range from one thousand to more than three thousand. Elections to public offices even at village level give rise to sharp polarization of the electorate on caste or communal basis. The possibility of disturbance of law and order in a meeting of the Grama Sabha called for considering a motion for removal of the Pradhan cannot be excluded. Moreover, there cannot also be due deliberation of a serious matter as no confidence motion by a very large body of persons. While amending Section 14 of the Act so as to confer the power to remove the Pradhan of a Grama Sabha on the members of the Gram Panchayat the legislature must have taken into consideration the prevailing social environment. Moreover, by way of safeguard against any arbitrary exercise of the power of removal it is necessary that the motion must be passed by a majority of two thirds of the members present and voting.

In view of the above, it is now well settled that Section 24 of the Act is intra vires the Constitution. The second contention raised on behalf of the petitioner is also not sustainable in the eye of law.

Both the contentions raised by the Learned Counsel for the petitioner having failed, this Writ Petition has no merit and is therefore, dismissed. No order as to costs.

Pradip Mohanty, J.

10. I agree.