
(2001) 02 OHC CK 0002
In the Orissa High Court
Case No : O. J. C. No. 3638 of 2000

Smt. Buli Dash	Vs	APPELLANT
State of Orissa and others		RESPONDENT

Date of Decision : 16-02-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa Grama Panchayat Act, 1964 — Section 18(2), 25, 25(3)
Orissa Panchayat Samiti (Conduct of Business) Rules, 1969 — Rule 5

Citation : (2001) 91 CLT 734 : (2001) 1 OLR 580

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : Mr. Subash Mansingh, for the Appellant; A.G.A., for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—The petitioner was elected as Sarpanch of Gunthuni Grama Panchayat in the district of Nayagarh. She has impugned the order under Annexure-1 passed by the Collector disqualifying her from continuing as Sarpanch for having incurred disqualification as contemplated in section 25(3) of the Orissa Grama Panchayat Act, 1964 (in short, the "Act"). Section 25(3) of the Act is extracted hereunder :--

"25. Disqualification for membership of Grama Panchayat-

(3) Without prejudice to the provisions of the foregoing sub-sections the Sarpanch of a Grama Panchayat shall be disqualified to continue and cease to be the Sarpanch, if he fails to attend three consecutive ordinary meetings of the Samiti, of which he is a member, without the previous permission in writing of the said Samiti."

2. The learned counsel for the petitioner has contended that in absence of any resolution of the Grama Panchayat to the effect that the petitioner had remained absent from three consecutive meetings, no such decision could have been given

by the Collector. Such submission is based on misconception of provisions contained in section 25 of the Act, The disqualification contemplated in the aforesaid provision relates to the sufficiency of reasons indicated by the Sarpanch for remaining absent and not regarding the disqualification itself.

3. The next contention of the petitioner is that no notice had been served in accordance with law regarding the meeting. In her show-cause the petitioner has raised such a question, but nowhere it has been held by the Collector that notice as contemplated under the relevant provisions had been served. It has been observed in the decision reported in Smt. Minarani Kar Vs. Block Development Officer, Jatni and Others, that unless a notice as required under the law is served, a Sarpanch cannot be disqualified for alleged non-attendance from three consecutive meetings. Similar view has been expressed in O. J. C. No. 9049 of 1999 (Sarat Chandra Kumbhar v. State of Orissa through its Secretary, Department of Panchayati Raj, Secretariat, Bhubaneswar and others), disposed of on 8-5-2000, Under the Orissa Panchayat Samiti (Conduct of Business) Rules, 1969, the manner of sending notice in respect of ordinary meeting of the Panchayat Samiti has been indicated. Rule 5(i) lays down as follows :--

"5. (i) At lease seven clear days notice of a meeting of the Samiti, shall be given to every member besides the member of the State Legislature as required by subsection (2) of section 18 of the Act. The notice shall be issued under the signature of the Block Development Officer and served by post under certificate of posting. A copy of the notice shall also be published in the notice board of the Samiti :

Provided that the notice for an emergency meeting may be served by post under certificate of posting or by such other method as may be deemed expedient.

(ii) The notice shall setforth clearly and fully the time, place and date of the meeting and the business to be transacted there at;

(iii) Accidental failure of service shall not invalidate the proceedings of any meeting."

A perusal of the aforesaid provisions clearly indicate that so far as the ordinary meetings are concerned, notice should be served by post under certificate of posting and a copy of the notice shall also be published in the notice-board of the Samiti. So far as the emergency meeting is concerned, notice should be served by post under certificate of posting or by such other method as may be deemed expedient. The disqualification contemplated in section 25(3) of the Act relates to non-attendance of three consecutive ordinary meetings. It has been contended in the counter affidavit that notice had been served through special messenger. Neither in the order passed by the Collector, nor in any document produced in this Court, it has been shown that as a matter of fact, notice had been served. Moreover, when the rules contemplate that notice should be served by post under certificate of posting, sending of notice through special messenger, even if correct, cannot be assumed to be sufficient for the purpose of taking action

regarding disqualification for alleged non-attendance of three consecutive meetings. In the decision reported in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, it has been made clear that when the manner of taking a particular action is laid down, such action must be taken in accordance with the mode prescribed, or not at all. Non-attendance of three consecutive meetings visits a person which serious consequences and as such statutory provisions regarding issuance of notice should be strictly construed. Since there is no material to indicate that notice had been sent in accordance with the mode expressly provided under the statutory rules, the subsequent order passed by the Collector disqualifying the petitioner cannot be sustained and is accordingly quashed.

The writ application is allowed. There will be no order as to costs.

4. Writ application allowed.