
(2004) 10 OHC CK 0018
In the Orissa High Court
Case No : Writ Petition (C) No. 8740 of 2004

Smt. Heeramani Munda

APPELLANT

Vs

The Collector and Others

RESPONDENT

Date of Decision : 07-10-2004

Acts Referred:

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

Citation : (2005) 99 CLT 180 : (2004) 2 OLR 506

Hon'ble Judges : Sujit Barman Roy, C.J;L. Mohapatra, J

Bench : Division Bench

Advocate : S.K. Nayak 2, B.K. Rout, S.K. Pattnaik, C.R. Parida and A. Nayak, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—Though this matter was listed for admission, on consent of the Learned Counsel for the parties, it was taken up for final disposal.

2. The petitioner who is the Sarpanch of Budhikapudf Grama Panchayat has filed this Writ Application challenging the order in Annexure-3 passed by the Collector, Keonjhar removing her from the post of Sarpanch on the basis of resolution passed in a no-confidence motion.

3. The case of the petitioner is that she was elected as Sarpanch of the aforesaid Grama Panchayat under Patna Block and after assuming office she has been sincerely working for development of the Grama Panchayat. On the basis of a requisition made by some of the members, a meeting was fixed for holding of no-confidence motion on 30.7.2004 and the petitioner was issued with a notice dated 15.7.2004 by the Sub-Collector, Keonjhar. It is alleged in the petition that on 30.7.2004 there was no discussion on the vote of no confidence against the petitioner, but the Presiding Officer without maintaining the secrecy of voting directed the voters to vote against the petitioner. The votes were also given in open. These allegations were brought to the notice of the Collector in Annexure-2

but in spite of the same, the Collector passed the impugned order in Annexure-3 on the basis of the resolution passed in the no-confidence motion. The Learned Counsel appearing for the petitioner challenged the resolution passed in the no-confidence motion as well as the order of the Collector in Annexure-3 removing her from the office of the Sarpanch only on the ground that even though the Statute provides for clear fifteen days notice, the Sub-Collector issued notice on 15.7.2004 fixing the date of no-confidence motion to 30th July, 2004. According to the Learned Counsel, the date of issuance of notice and the date fixed for no-confidence motion have to be excluded from fifteen days notice and in the event those two days are excluded, the petitioner had only thirteen days notice. This being in violation of the statutory provision as contained in the Orissa Grama Panchayats Act, 1964 the resolution passed in the no-confidence motion is a nullity and, therefore, the Collector could not have acted upon such resolution while passing the order in Annexure-3.

4. This being the only question raised before this Court, it is necessary to refer to the relevant provision of the Act. Section 24(2)(c) provides as follows :

"24. Vote of no confidence against Sarpanch or Naib-Sarpanch : (2)(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."

5. Relying on the aforesaid provision, it was contended by the Learned Counsel for the petitioner that the petitioner had not been given fifteen days clear notice as required under the said provision. In this connection, reference may be made to a Full Bench decision of this Court in the case of Sarat Padhi v. State of Orissa and others reported in 1988 (1) OLR 76. The majority view in the aforesaid decision is as follows :

"Requirement of giving the notice and fixing the margin of time between the date of notice and date of meeting are mandatory, violation of which will make the meeting invalid. But the mode of service or failure by any member to receive the notice or allowing less than 15 clear days before the meeting is directory. The decision 45 (1978) CLT 313 holding that the entire provision, is directory, is not correct.

The scheme of the notice contemplate 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 date of 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 (c) to Sub-section (2) of Section 24.

Once I come to the above conclusion, I must record my disapproval to the observation of a general nature made in Debaraj Malika's case 45 (1878) CLT 313 to the effect that the whole of the provision u/s 24(2)(c) is directory in nature, as that is too wide."

6. The Learned Addl. Government Advocate relied upon a decision of the Andhra Pradesh High Court in the case of K. Sujatha Vs. Government of Andhra Pradesh and Another, On examination of the said decision it appears that the provisions contained in Andhra Pradesh Grama Panchayats Act are more or less similar to the provisions contained in the Orissa Grama Panchayats Act with regard to holding of no-confidence motion. The Full Bench of Andhra Pradesh High Court in the aforesaid case held as follows :

"Scheme of issuing notice of meeting to every member provide when notice of motion of no confidence is submitted, can be divided into separate parts. After the notice of intention to move motion has been submitted in the requisite form to the concerned authority under Rule 2 the said Officer thereafter under Rule 3 is required to convene and preside over a meeting for consideration of the motion. He is required to convene and preside over the meeting, which shall not be later than thirty days from the date on which the motion of notice was delivered to him. Rule 3, enjoins upon him to give to every member notice of not less than fifteen clear days and about the consequences of non-compliance of this provision. First requirement of this part of Rule 3 is of giving notice to every member. The second requirement is the period of notice of not less than fifteen clear days excluding the date of notice and the date of proposed meeting. The third portion of the rule is about the different modes of delivery or effecting of service of notice. In so far as the first portion is concerned, there is no dispute and it must be held that the Officer concerned must give and is bound to give notice of motion to every member in requisite form annexed to the Rules, which requirement is mandatory. There is also no dispute as regards the second portion that there should be fifteen clear days available between the two relevant dates i.e., the date of notice and the date of proposed meeting. This portion of Rule 3 is also mandatory inasmuch as the concerned officer cannot act in a manner of even issuing notice of no dispute as regards the second portion that there should be fifteen clear days available between the two relevant a period of less than fifteen clear days. Both the portions being mandatory in nature, breach of these

two conditions would make the meeting as well as the proceedings taken therein invalid.

The purpose and object of giving notice of consideration of no confidence motion is only to give due intimation to the members or information of the proposed meeting. Therefore, the fact that a member has got a shorter period of notice than fifteen clear days from the date of receipt of the notice would not matter. When notice is sent by post and the law permits the date of sending of notice to be treated as the date of delivery in that case obviously the period available to the member will be shorter than fifteen clear days from delivery to meeting, therefore, there is no reason why the Rule 3 be held to be mandatory as regards the service of notice. Unless it is shown that the shortfall in the period of notice of the meeting has caused some prejudice to the member, neither the meeting nor the proceedings taken there under would be said to be invalid. It is only in the eventuality of prejudice being shown that the meeting or the proceedings taken thereunder can said to be invalid. The Legislature has rightly not provided in the rule that non-compearance of any shortfall in the notice would render the meeting or the proceedings taken thereunder to be invalid. Had that been the intention, the Legislature, obviously, would have provided since the law had been clearly settled by the time the Act was enacted and the Rules were framed by the judgment in Narasimaiah's case."

The Apex Court also in the case of K. Narasimhiah Vs. H.C. Singri Gowda, while considering the provision laid down in Mysore Town Municipalities Act (22 of 1951) held that for holding of a special general meeting the requirement of three days clear notice to the Councillors is not mandatory. The Court observe as follows :

"The main object of giving the notice u/s 27(3) is to make it possible for the Councillors to so arrange their other business as to be able to attend the meeting. For an ordinary general meeting the notice provided is of seven clear days. That is expected to give enough time for the purpose. But a lesser period of three clear days is considered sufficient for special general meetings generally. The obvious reason for providing a shorter period of such meetings is that these are considered more important meetings and Councillors are expected to make it convenient to attend these meetings even at the cost of some inconvenience to themselves. Where the special general meeting is to dispose of some matter of great urgency it is considered that a period of even less than three clear days notice would be sufficient. Thus the requirement of three clear days notice to councillors for holding a special general meeting as embodied in Section 27(3) is only directory and not mandatory.

Where, therefore, some of the councillors of a Municipality received less than three clear days notice of a special general meeting to discuss a resolution to express no confidence in the President and in the strength of 20, 15 out of 19 Councillors who attended the meeting voted for the resolution, the proceedings of the meeting were not prejudicially affected by the "irregularity in the service

of the notice" and the resolution passed there was not invalidated."

The Learned Counsel for the petitioner had referred to a decision of this Court in the case of Smt. Susila Sahani Vs. State of Orissa and Others, to say that the date of notice and the date fixed for no confidence motion are to be excluded.

7. On examination of the aforesaid decisions specifically the Full Bench decision of this Court in the case of Sarat Padhi v. State of Orissa and others (supra) it is clear that the margin of clear 15 days time between the date of notice and the date of meeting is mandatory. This Court further held that if there is breach of that condition, then the meeting will be invalid without any question of prejudice. However, the Court further observed that the mode of service or failure by any member to receive the notice or allowing less than 15 clear days before the date of meeting will not render the meeting invalid. The specific case of the petitioner is that if the date of notice and the date of meeting fixed are excluded, then the notice period shall be thirteen days as is clear from Annexure-1 itself. Annexure-1 is also very clear to the effect that the Sub-Collector on 15.7.2004 issued notice fixing the date of -no confidence motion to 30th July 2004. If the date of notice and the date of meeting fixed are excluded as per the decision of this Court in the case of Smt. Susila Sahani v. State of Orissa and others (supra) fifteen days clear notice had not been given and this provision being mandatory, there has been violation of the same and the notice for no-confidence motion is of no effect. We accordingly allow the Writ Application and quash the order passed by the Collector, Keonjhar in Annexure-3.

Sujit Barman Roy, C.J.

8. I agree