
(2000) 11 OHC CK 0014
In the Orissa High Court
Case No : O.J.C. No. 3765 of 2000

Smt. Kamala Tiria

APPELLANT

Vs

State of Orissa and others

RESPONDENT

Date of Decision : 08-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa Zilla Parishad Act, 1991 — Section 39, 39(1), 39(2)

Citation : AIR 2001 Ori 67 : (2001) 91 CLT 159

Hon'ble Judges : R.K. Patra, Acting C.J.; Ch. P.K. Misra, J

Bench : Division Bench

Advocate : M/s M.S. Panda and S.R. Kanungo, for the Appellant; Shri S.K. Das, A.G.A., M/s M. Mishra, P.K. Das, B. Mishra and B.B. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, A.C.J.

1. In this writ petition the petitioner seeks to assail the validity of the notification dated 10th of April. 2000 at Annexure-15 of the Government of Orissa in Panchayatiraj (G.P.) Department publishing the resolution of the Mayurbhanj Zilla Parishad in which want of confidence in her as the President of the said Zilla Parishad was recorded.

2. The case of the petitioner may be briefly stated :

In the election held in January, 1997 fifty-six members including the petitioner were elected as the Members of the Mayurbhanj Zilla Parishad (hereinafter referred to as "the Zilla Parishad") from different constituencies in the district of Mayurbhanj. The petitioner came to be elected as the President of the Zilla Parishad in the election held on 15-2-1997. While she was continuing as such, on 11-1-2000 the District Magistrate, Mayurbhanj issued notice at Annexure-1 notifying that, a special meeting would be convened on 19-1-2000 in the Collectorate's Conference Hall to consider "no confidence motion" against her.

Along with the said notice, a copy of the requisition dated 23-12-1999 (Annexure-2) and minutes of discussion of the meeting dated 5-11-1999 (Annexure-3) were enclosed. Many members of the Zilla Parishad were taken aback to find their signatures in the recorded minutes (Annexure-3) because they were not present in any such meeting held on 5-11-1999. They had not put their signatures on any recorded minutes of meeting of that day. The Zilla Parishad consists of 56 elected members and 39 Ex-Officio members having a total of 95. Ex-officio members have no right to vote in a motion of no confidence meeting, but they were invited to attend the meeting. The petitioner on 17-1-2000 made representation to cancel the said meeting. Despite such protest, on 19-1-2000 meeting was held and the Collector without holding any discussion on the resolution illegally and arbitrarily declared that resolution expressing want of confidence in the petitioner was passed. Being aggrieved by such illegal resolution, she filed O. J. C. No. 953 of 2000 in this Court which was disposed of by order dated 24-1-2000 directing the State Government to consider the grievance of the petitioner. The Government without applying its mind arbitrarily and by a bald order rejected the claim in the Government letter No. 5943 dated 10-4-2000 at Annexure-14.

3. The opposite parties 1 to 3 have filed their counter affidavit denying the allegations made by the petitioner. The opposite party No. 5 who has been elected as President in place of the petitioner has filed a separate counter affidavit on her behalf.

4. Shri M.S. Panda, learned counsel for the petitioner in support of the writ petition raised the following contentions :

(i) The requisition for convening the meeting to record want of confidence was not signed by the requisite members having right to vote.

(ii) The resolution proposed to be moved at the meeting (draft resolution) was not enclosed to the requisition.

(iii) The persons who participated in the voting had no right to vote.

(iv) The Revenue Divisional Commissioner, who is the "designated authority" to convene the requisition meeting did not hold the meeting.

(v) The decision of the Government communicated in letter dated 10-4-2000 at Annexure-14 is vulnerable as it is a bald one not supported by any reason.

5. Before considering the contentions raised in the case, it would be appropriate to refer to section 39 of the Orissa Zilla Parishad Act, 1991 (hereinafter referred to as "the Act") which deals with the procedure of recording want of confidence in the President or Vice-President of the Zilla Parishad. Sub-section (1) thereof lays down that if a resolution is passed at a meeting of the Parishad specially convened for the purpose supported by a majority of not less than two-thirds of the total members having a right to vote expressing want of confidence in the President/ Vice-President of such Parishad, such resolution will be forthwith

published in the prescribed manner and with effect from the date of such publication the President or Vice President against whom resolution is passed shall be deemed to have vacated the office. Sub-section (2) containing different clauses deals with the mode of convening the special meeting. It is necessary to quote and extract its relevant clauses : --

"Section 39(2) : xx xx xx xx (a) no such meeting shall be convened except on a requisition signed by at least one-third of the members with a right to vote along with a copy of the resolution proposed to be moved at the meeting;

(b) the requisition shall be addressed to the Revenue Divisional Commissioner;

(c) the Revenue Divisional Commissioner 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 with a right to vote along with a copy of the requisition and of the proposed resolution at least seven clear days before the date so fixed;

(d) the Revenue Divisional Commissioner or when he is unable to attend, any other Gazetted Officer not below the rank of a Class-I Officer of the State Civil Service, authorised by him, shall preside over and conduct the proceedings of the meetings;

(e) to (1) xx xx xx xx"

It provides that no such meeting shall be convened except a requisition signed by at least one-third members with a right to vote along with the copy of the resolution proposed to be moved at the meeting. The requisition will be addressed to the Revenue Divisional Commissioner who on receipt of it shall fix the date, hour and place of such meeting and give notice of the same to all the members with a right to vote along with the copy of the requisition and of the proposed resolution at least seven clear days before the date so fixed. The said meeting shall be presided over and conducted by the Revenue Divisional Commissioner or in his absence any such Gazetted Officer not below the rank of Class-I Officer of State Civil Service authorised by him,

A close and careful reading of the aforesaid would show that before convening the special meeting for recording want of confidence in the President or the Vice-president of the Parishad, it should be preceded by a requisition to be addressed to the Revenue Divisional Commissioner signed by at least one-third of the members with a right to vote. The requisition is required to be accompanied with a copy of the resolution proposed to be moved at the meeting. On receipt of such requisition the Revenue Divisional Commissioner will give notice fixing the date, hour and place of such meeting to all the members with a right to vote along with a copy of the requisition and of the proposed resolution to be passed at such meeting.

6. Learned Additional Government Advocate appearing for opposite parties 1 to 3 and Shri Mishra appearing for opposite party No. 5 by referring to Annexure-2 and Annexure-3 submitted that the specially convened meeting held on

19-1-2000 was duly preceded by a valid requisition which was addressed to the Revenue Divisional Commissioner and the requisition was accompanied with a copy of the resolution proposed to be moved at the meeting. In view of such submission, we may extract hereunder both the documents viz. Annexures-2 and 3, Annexure-2 is a letter dated 23-12-1999 which was written by one Member of Zilla Parishad addressed to the Revenue Divisional Commissioner. It reads as follows ;--

".....In forwarding herewith a resolution in original passed by 34 Members of Mayurbhanj Zilla Parishad for vote of no confidence against Smt. Kamala Tirya, President, Mayurbhanj Zilla Parishad, we are to request you to kindly take appropriate action to convene a special meeting of the Parishad to pass agenda "Vote of no confidence" against Smt. Kamala Tirya, President Mayurbhanj Zilla Parishad....."

Annexure-3 is the minutes of discussion held at the meeting on 5-11-1999 which was attended by 34 Members of the Zilla Parishad who had put their signatures. It reads as followed :

"A meeting was held in Stadium premises Baripada on 05-11-99 at 2 p.m. in order to bring vote of no confidence against Smt. Kamala Tirya, President, Mayurbhanj Zilla Parishad as per section 39(2)(a) of Orissa Zilla Parishad Act, 1991 where Sri Sudarshan Murmu one of the Members of Zilla Parishad presided over.

Soon after the meeting started Sri Birendra Nath Mohanta, the member of such Zilla Parishad appealed the members present & put up a proposal stating that Smt. Kamala Tirya, the President Zilla Parishad, Mayurbhanj should not continue no longer as the President in view of her arbitrary action, misuse of official power, not listening to the views of the members conducting aimless & fruitless tours hampering the interest of general people of Mayurbhanj as a whole.

Sri Abhinna Sundar Patra seconded the proposal which was accepted by all the members present.

The members present unanimously agreed and accepted the proposal raised by Sri Birendra Nath Mohanta, member whole heartily, and decided to send a requisition along with this resolution to the Revenue Divisional Commissioner, Central Division, Cuttack for taking necessary action to pass the vote of no confidence against the President, Mayurbhanj Zilla Parishad for the reason as narrated above.

The meeting was concluded with thanks to the chair.

Sd/- President of the Meeting "

As already noted, clause (a) of sub-section (2) of section-39 of the Act requires that the requisition shall be addressed to the Revenue Divisional Commissioner which is required to be signed by at least one-third of the members with a right

to vote. Alongwith the requisition, a copy of the resolution proposed to be moved in the specially convened meeting has to be enclosed. Annexure-2 is practically a forwarding letter written by one of the members of the Zilla Parishad to the Revenue Divisional Commissioner requesting him to convene a special meeting to pass the agenda "'vote of no confidence against Smt. Kamala Tiria, President, Mayurbhanj Zilla Parishad." Now coming to Annexure-3 it is the submission of the learned counsel appearing for the contesting parties that it is a consolidated document comprising the requisition to the Revenue Divisional Commissioner requesting him to convene a special meeting as well as the resolution proposed to be moved in the said special meeting. Learned counsel had taken that stand because admittedly no other document evidencing a proposed resolution to be moved in the specially convened meeting was enclosed to the so-called requisition. We have carefully perused Annexure-3 extracted above. On its reading it appears that a meeting was held on 5-11-1999 in which there was discussion that the petitioner should no more continue as the President of Zilla Parishad because of her arbitrary actions, etc. and accordingly it was decided in the meeting to move the Revenue Divisional Commissioner for convening a special meeting as required u/s 39 (1) of the Act. There is nothing in Annexure-3 to assume that it also contained the proposed resolution to be moved in the meeting to be specially convened by the Revenue Divisional Commissioner. This being the factual position, there is no compliance of sub-clause (a) of sub-section (2) of section 39 of the Act. In the facts and circumstances, it is not possible to hold that there was substantial compliance of the provision. Therefore, pre-condition of the specially convened meeting held on 19-1-2000 having not been satisfied, resolution passed on that day (19-1-2000) recording want of confidence in the petitioner cannot be supported in law and has to be declared null and void. We order accordingly.

As the writ petition succeeds on this ground, we need not proceed to examine the other submissions raised on behalf of the petitioner.

7. In the result, the resolution dated 19-1-2000 of the Mayurbhanj Zilla Parishad in which lack of confidence in the petitioner was recorded, the Government notification dated 10-4-2000 at Annexure-15 and the Government order communicated in the letter dated 10-4-2000 at Annexure-14 are hereby quashed.

8. While issuing Rule Nisi a Bench of this Court on 10-5-2000 observed that any election to the post of President would be subject to the result of the writ petition and in the event the petitioner succeeds, she would be restored to her position. Following the vacancy caused pursuant to the resolution dated 19-1-2000, there was fresh election and opposite party No. 5 has been elected as President. At the writ petition now succeeds, the election of opposite party No. 5 as President of the Zilla Parishad is hereby set aside. The opposite parties are hereby directed to restore the petitioner to her post of President, Mayurbhanj Zill Parishad forthwith.

The writ petition is accordingly allowed. No costs.

Ch. O.K. Misra, J.

9. I agree.

10. Writ petition allowed