

(2001) 05 OHC CK 0005

In the Orissa High Court

Case No : Original Jurisdiction Case No. 11575 of 2000

Smt. Kanti Kumbhar

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 28-05-2001

Acts Referred:

Orissa Panchayat Samiti Act, 1959 — Section 46B

Citation : (2001) 2 OLR 44

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

Bench : Single Bench

Advocate : B.P. Ray, S. Pujhari and R. Sahoo, S.N. Mohapatra, K.R. Mohapatra and S. Ghosh, for the Appellant; A.G.A. (OPs. 1 and 2), for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra, J.—The petitioner is the Chairperson of Dhanakauda Panchayat Samiti. In this writ application, she has prayed for quashing the Notice dated 30.10.2000 issued by the Sub-Collector, Sambalpur Sadar (opposite party No. 2) under Annexure- 2 series fixing the meeting of the Panchayat Samiti on 22.11.2000 for considering the requisition regarding "no-confidence motion" against the petitioner.

2. In the writ application it has been asserted that the petitioner was performing her duty as Chairperson properly and with an ulterior motive, some of the members held a meeting on 3.9.2000 and passed a resolution to send requisition to remove the petitioner from the office of Chairperson without assigning any reason in the said resolution. It is also asserted that notice along with copies of the requisition and proposed resolution of no-confidence of had not been communicated to each member of the Panchayat Samiti. It is further asserted that the resolution dated 3.9.2000. ".....does not satisfy the intent and purpose of the provisions of Section 46-B. The said resolution does not indicate or assign any reason to which the petitioner can effectively reply in the proposed meeting. Hence there will be no adequate opportunity available to the petitioner while

facing the no-confidence motion." (quoted from the writ petition).

3. At the time of entertaining the writ application, an interim order was passed on 14.11.2000 directing that the Meeting for considering the no-confidence motion may be held on the scheduled date, but no final decision should be taken without leave of the Court.

4. An intervention petition has been filed on behalf of the Vice-Chairman of the Panchayat Samiti, wherein it is indicated that in the meantime, on 22.11.2000 the no-confidence motion has been passed, but in view of the interim order passed by the High Court, the petitioner is still continuing in the office of Chairperson.

5. Section 46-B of the Orissa Panchayat Samiti Act (in short, the "Act") provides relating to vote of no-confidence against the Chairman and Vice-Chairman of Panchayat Samiti. Section 46-B (1) and (2) (a), (b) and (c) being relevant for the purpose of the present case, are quoted hereunder :

"46-B. Vote of no-confidence against Chairman and Vice- Chairman of Samiti-

(1) Where at a meeting of the Samiti specially convened in that behalf a resolution is passed, supported by a majority of not less than two-thirds of the total number of members having a right to vote, recording want of confidence in the Chairman or Vice-Chairman of such Samiti the resolution shall forthwith be published by such authority and in such manner as may be prescribed and with effect from the date of such publication the Chairman or Vice-Chairman, as the case may be, shall be deemed to have vacated office.

(2) In convening a meeting under Sub-section (1) and in the conduct of business at such meeting the procedure herein specified shall be followed, namely :

(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 Sub-divisional Officer;

(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 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;

....."

A perusal of the aforesaid provisions makes it clear that a requisition for convening a meeting to consider the no-confidence motion should be signed by at least one-third of the members of the Panchayat Samiti having a right to vote and along with the requisition a copy of the resolution proposed to be moved at the meeting should be there and the requisition should be addressed to the Sub-divisional Officer. On receipt of such requisition along with copy of the resolution

proposed to be moved at the meeting, the Sub-divisional Officer is to fix the date, hour and place of such meeting and give notice of the same to all the members who have a right to vote along with a copy of the requisition and of the proposed resolution at least seven clear days before the date fixed for holding such meeting.

6. The petitioner in this case has asserted that the requisition along with the proposed resolution was adopted at a meeting on 3.9.2000 without observing the due procedure laid down u/s 46-B of the Act. This contention is without any substance. For submitting a requisition for holding a specially convened meeting for discussing about no-confidence motion, no formal meeting of the Panchayat Samiti is necessary. Section 46-B (2) (a) only requires that a special meeting for discussing about the no-confidence motion can be convened only on the basis of a requisition signed by at least one-third of the members with a right to vote and along with such requisition, a copy of the resolution proposed to be moved at such meeting is required to be sent. There is no requirement in the Act that before sending such a requisition, there has to be a formal meeting of the Panchayat Samiti. It is, of course, true that in the present case, the proposed resolution relating to no-confidence was also purported to have been adopted in a meeting held on 3.9.2000. Such a meeting of some of the members of the Panchayat Samiti does not have any statutory force and is not required to be held in a particular manner. It can be considered to be a convenient method for preparing requisition along with proposed resolution (the no-confidence motion). Therefore, even assuming that such a meeting had been held without following any procedure contemplated u/s 46-B, the requisition on the basis of so-called resolution adopted in such meeting does not become illegal and on the basis of such requisition the meeting contemplated u/s 46-B (1) could be legally convened by the prescribed authority if other conditions are fulfilled. In this context, it is also contended that no reason had been given in the proposed resolution for moving the no-confidence motion against the Chairperson. The provisions contained in Section 46-B of the Act do not require any particular reason to be given for sending a requisition for the purpose of considering a no-confidence motion. It is also not necessary that in the proposed resolution, the reasons for moving the no-confidence motion against the Chairman or the Vice-Chairman, as the case may be, should be indicated.

7. In the writ application it has been vaguely asserted that the copy of the requisition and of the proposed resolution had not been sent to all the members having right to vote. No specific assertion has been made as to which particular members such requisition and copy of the proposed resolution had not been sent. On the basis of such vague assertion, it cannot be held that notice as contemplated had not been sent.

8. For the aforesaid reasons, I do not find any merit in this writ application, which is accordingly dismissed.

9. From the affidavit of the Intervenor it appears that no-confidence motion has

already been adopted and such no- confidence motion has not been given effect to because of the stay order passed by this Court. Now that the writ application is dismissed, the interim order is automatically vacated and it would be open to the prescribed authority to act in accordance with law on the resolution passed in the meeting of the Panchayat Samiti on 22.11.2000.

There will be no order as to costs.