
(2001) 05 OHC CK 0015

In the Orissa High Court

Case No : Original Jurisdiction Case No. 4565 of 2001

Smt. Susila Sahani

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 15-05-2001

Acts Referred:

Orissa Grama Panchayat Act, 1964 — Section 24(2), 24(3)

Citation : (2001) 2 OLR 69

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

Bench : Single Bench

Advocate : D.P. Dhal, A.K. Acharya, K. Rath and D.K. Das, for the Appellant; A.G.A. (OPs. 1 to 6) and M. Das, for the Respondent

Judgement

P.K. Misra, J.—The petitioner has challenged the order under Annexure-4 issued pursuant to no-confidence motion passed against the petitioner purporting to remove her from the office of Sarpanch of Akarpada Grama Panchayat in the district of Jajpur, mainly on two grounds, firstly that clear 15 days" notice as contemplated u/s 24 (2) (c) of the Orissa Grama Panchayat Act, 1964 (hereinafter referred to as the "Act") had not been given and secondly, that opposite parties 17 and 18, who were not members of the Grama Panchayat, had participated in the no-confidence motion.

2. So far as the first ground is concerned, the provision contained in Section 24 (2) (c) of the Act is extracted hereunder :

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

(1)

(2) In convening a meeting under Sub-section (1) and in the conduct of business at such meeting the procedure shall be in accordance with such rules, as may be prescribed, subject however to the following provisions, namely :

... ..

(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.

... .."

In the present case, notice has been annexed as Annexure-3. The notice is dated 13.2.2001 and the meeting was fixed to 28.2.2001. The provision requires that clear fifteen days notice should be given, which means that the date of notice and the date of meeting are to be excluded. This position is clear in view of the decision reported in 1988 (I) O.L.R. 76 (Sarat Padhi v. State of Orissa and others). In such view of the matter, the no-confidence motion notice itself was of no effect and is quashed. Consequently, the order under Annexure-4 is quashed.

3. Mr. Das, learned counsel appearing for some of the opposite parties, submitted that since requisition had been given, it was the duty of the Collector to fix the date and issue valid notice and for the default of the Collector, the requisitioning members should not be prejudiced. The learned counsel for the petitioner, on the other hand, submitting that in view of the provision contained in Section 24 (3) of the Act, before expiry of one year, no further no-confidence motion can be brought. The aforesaid submission of the learned counsel for the petitioner is based on a misconception of the provision contained in Sub-, sec, (3) of Section 24, which is quoted hereunder :

"24.(3) When a meeting has ben held in pursuance of Sub-section (2) for recording want of no-confidence in the Sarpanch or Naib-Sarpanch, as the case may be, no fresh requisition for a meeting shall be maintainable -

(a) in cases falling under Clauses (i) and (j) of the said sub-section or where the resolution is defeated after being considered at the meeting so held, before the expiry of one year from the date of such meeting; or

(b) where the notification calling for general election to the Grama Panchayat has already been published under or in pursuance of Section 12."

It is thus clear that where the no-confidence motion is defeated or where it fails in view of the provision contains in Section 24 (2)(i) and (j), fresh requisition cannot be filed for a period of one year. In the present case, no-confidence motion had not been defeated. It is being annulled on the ground of violation of the mandatory provisions relating to notice. Since the mistake has emanated from public officials, neither the petitioner, nor the opposite parties are to suffer on that account. On the basis of the requisition, afresh meeting shall be called by the authorities.

4. Learned counsel for the petitioner then submitted that earlier there was a direction given in O.J.C. No. 3160 of 2001 filed at the instance of the petitioner that before notifying the no-confidence motion, the question as to whether the opposite parties 17 and 18 were members, or not is required to be decided. Now

that the no-confidence motion has been annulled, the Collector is to consider as to whether the present opposite parties 17 and 18 were valid members. If it is found that they were not valid members, their signatures on the requisition should be ignored. The question of validity of membership of opposite parties 17 and 18 should be decided within a period of two weeks from today after giving them notice. Thereafter, the Collector shall fix an appropriate date and shall take steps in accordance with Section 24 (2) (c) as expeditiously as possible.

5. The writ application is accordingly disposed of with the aforesaid observation and direction. There will be no order as to costs.