
(2001) 12 OHC CK 0012
In the Orissa High Court
Case No : O.J.C. No. 12310 of 2001

Smt. V. Puspanjali Raju

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 10-12-2001

Acts Referred:

Orissa Municipal Act, 1950 — Section 3(16), 54, 54(2)

Citation : (2002) 1 OLR 227

Hon'ble Judges : P.K. Balasubramanyan, C.J.; R.K. Patra, J

Bench : Division Bench

Advocate : Bharati Dash, J.K. Mohanty and P.A. Sinha, for the Appellant; P.K. Mohanty, Additional Government Advocate for O.P. Nos. 1 to 3, M. Mishra, S. Senapati, B.K. Mishra and J. Panda for Intervenor-O.P. No. 5, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Balasubramanyan, C.J.—When Misc. Case No. 13627 of 2001 was listed for further orders, and Misc. Case Nos. 15082 and 15510 of 2001 were listed for vacation of stay, with consent of learned counsel for parties the main writ petition was taken up for final hearing and the same is disposed of by this judgment.

2. The petitioner was elected as the Chairperson of Notified Area Council, Digapahandi in the district of Ganjam. She assumed the office of Chairperson on 19.7.1997. The Council consists of 11 members. On 27.7.2001, 8 of the councillors forwarded a no confidence motion against the Chairperson, the present petitioner, to the District Magistrate. The District Magistrate issued notice of the meeting to be held for considering the no confidence motion u/s 54 of the Orissa Municipal Act, 1950 (hereinafter referred to as the "Act"). The said notice was issued on 1.8.2001 and the meeting was held on 6.8.2001 in which the petitioner also participated. The no confidence motion against the petitioner was passed by 8 of the councillors voting for it. Thereafter a fresh election to the office of Chairperson was notified by the State Election Commission, Orissa on

21.9.2001. The petitioner contested the election again as a candidate to the office of Chairperson. At this juncture she filed the present writ petition on 19.9.2001 before this Court praying for issue of a writ of certiorari quashing the notice for convening the meeting on 6.8.2001 for the purpose of passing the resolution for recording no confidence against the petitioner and for declaring the same to be without jurisdiction.

3. The main contention urged on behalf of the petitioner is that the requirements of Section 54 (2) of the Act were not strictly complied, with the result, the motion of no confidence passed against the petitioner was invalid in law. This contention has been met by the learned Additional Government Advocate Mr P. K. Mohanty by submitting that the requirement of Section 54 (2) of the Act were complied with and in any event, there was substantial compliance with the requirements. It was further contended that the petitioner by participating in the meeting held on 6.8.2001 and also by contesting in the subsequent election to the office of Chairperson was estopped from putting forward any contention based on procedural irregularity and hence she is not entitled to any relief. It was also submitted that the petitioner having contested the fresh election, is not entitled to any relief from this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

4. It is contended on behalf of the petitioner that Section 54 (2) (a) of the Act was not strictly complied with and further that there was no compliance with Section 54 (2)(c) since it was not the District Magistrate who issued the notice fixing the date of meeting for considering the no confidence motion.

5. The learned Additional Government Advocate with reference to the records submitted that the District Magistrate was on leave and the power was delegated to the Tahasildar, Digapahandi/Election Officer, and he had acted in terms of Section 54 (2) of the Act and hence there was nothing illegal in the matter of consideration of the no confidence motion. According to the learned Additional Government Advocate, as per the definition of "District Magistrate" given in Section 3 (16) of the Act. the exercise of power by the delegate was permissible under the Act, and for that reason, the proceeding cannot be invalidated.

6. The point raised in this case is since settled by the decision of this Court in *Jagdish Pradhan and Ors. v. Kapileswar Pradhan and Ors. : 64 (1987) C.L.T. 359, and in Sarat Padhi Vs. State of Orissa and Others, It is laid down that what is to be seen is whether there is substantial compliance with the procedural requirements in such a situation. In the latter decision, which is rendered by a Full Bench, it has been held that even if there was some procedural irregularity, the proceeding of the meeting will not stand vitiated automatically for any infringement of the section. The party challenging the validity of the meeting relying on the provision has to establish that he has been prejudiced.

7. In the case on hand, there cannot be any dispute that 8 of the 11 councillors constituting the requisite number u/s 54 of the Act forwarded the resolution to

the District Magistrate seeking to move a no confidence motion against the Chairperson of the Council. Thereafter notices were issued to the Councillors including the petitioners. A meeting was held. The no confidence motion was passed. A fresh election to the office of Chairperson was notified. The petitioner has participated in the proceedings all through. In such a situation, it is clear that the petitioner cannot successfully urge that there was no substantial compliance with the requirements of Section 54 (2) of the Act. The petitioner even if is not estopped from questioning the validity of the no confidence motion, cannot be successful in her challenge since she subsequently participated in the fresh election by her own conduct she has accepted the legitimacy of the procedure adopted by the District Magistrate while dealing with the motion of no confidence.

8. What is to be concluded here, is whether the petitioner is prejudiced by the manner of convening the meeting for consideration of the no confidence motion. She has not shown any prejudice or in what manner she was prejudiced. In that situation, going by the Full Bench decision of this Court in Sarat Padhi's case referred to above, it has to be held that the petitioner cannot be granted any relief on the ground that there was some violation of the procedure laid down in Section 54 (2) of the Act.

9. Moreover, on a scrutiny of the relevant facts placed before us and considering the submissions made, we find that the petitioner has not been able to establish a clear case of any violation with reference to Section 54 of the Act in the matter of moving and passing of the no confidence motion. We are, therefore, satisfied that no case for interference with the passing of no confidence motion has been made out by the petitioner. On the facts, the petitioner is not entitled to any relief.

The writ petition is hence dismissed.

R.K. Patra, J.

I agree.