
(2003) 09 OHC CK 0030

In the Orissa High Court

Case No : Writ Petition (C) No. 3103 of 2002

Sri Ramesh Chandra Samantray and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 02-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 243U(1)
Orissa Municipal Act, 1950 — Section 201

Citation : AIR 2004 Ori 37 : (2003) 96 CLT 482

Hon'ble Judges : M. Papanna, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : S.B. Panda, I. Mohanty and R.K. Rath, for the Appellant; A.G.A. for O.P. Nos. 1 to 3, B.M. Patnaik, R. Sharma, S.S. Samanta, A. Mishra, S. Mohanty and S. Nanda for O.P. No. 4 and S.C. Parija, P. Behera and M.R. Tripathy for intervenor, for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—Petitioner No. 1 is the Chairperson and petitioners 2 to 8 are the Councillors of the Paradeep Notified Area Council with effect from 22.4.2000. Paradeep Notified Area Council (for short, "the Paradeep N.A.C.") is presently a Municipality. By a notice dated 26.12.2001, the Director, Municipal Administration and Ex-Officio Additional Secretary to Government of Orissa, Housing and Urban Development Department intimated the petitioners that a special audit was conducted during the period from 15.1.2001 , to 20.2.2001 and an inspection was conducted by the Under Secretary to Government, Housing and Urban Development Department on 9.7.2001 and it has come to the notice of the Government that the Council of Paradeep N.A.C. has shown incompetency in performance of the duties imposed on it by law, has exceeded and abused its power and has acted in the manner prejudicial to the interest of the inhabitants of the Paradeep N.A.C. In the said notice dated 26.12.2001, instances of the irregularities alleged to have been committed by the Council of Paradeep N.A.C. were detailed and the petitioners were asked to show cause as to why the

Government should not dissolve the Council of Paradeep N.A.C., on the grounds mentioned therein. The petitioners submitted their replies to the aforesaid show cause notice and were heard by the Director, Municipal Administration on 29.6.2002 in support of the replies. But by a notification dated 27.8.2002 of the Government of Orissa, Housing and Urban Development Department issued by the Director, Municipal Administration and Ex-Officio Additional Secretary to Government, the Notified Area Council of Paradeep was dissolved with immediate effect by the State Government in exercise of its powers conferred by Sub-section (1) of Section 401 of the Orissa Municipal Act, 1950. Aggrieved, the petitioners have filed this writ petition under Article 226 of the Constitution for quashing the said notification.

2. Mr. Indrajit Mohanty, learned counsel for the petitioners, submitted that the proviso to Clause (1) of Article 243U of the Constitution makes it clear that where a Municipality is to be dissolved before the term of five years from the date for its first meeting, the Municipality has to be given a reasonable opportunity of being heard before its dissolution. He submitted that u/s 401 of the Orissa Municipal Act, if in the opinion of the State Government a Municipality is incompetent to perform or persistently makes default in performing the duties imposed on it by law or exceeds or abuses its powers, the State Government can dissolve the Municipality. According to Mr. Mohanty, if the said Section 401 is read with the proviso to Article 243U(1) of the Constitution, the State Government will have to grant reasonable opportunity of hearing to the Paradeep Municipality before forming an opinion that the Municipality should be dissolved. Mr. Mohanty submitted that the petitioners have not been heard by the State Government but by the Director of Municipal Administration on 29.6.2002 and on this ground alone the impugned notification is liable to be quashed. Mr. Mohanty next submitted that the irregularities referred to in the show cause notice dated 26.12.2001 relate to the period prior to 22.4.2000 when the petitioners were not holding office of the Chairperson and Councillors of Paradeep N.A.C. and the present Paradeep Municipality cannot be dissolved for irregularities of the Councillors of the Paradeep N.A.C. who were in office prior to 22.4.2000. He, however, submitted that only one irregularity, namely, engagement of NMR/DLR in violation of Government's instruction mentioned in the show cause dated 26.12.2001 under item-4 of the show, cause notice related to the period after 22.4.2000 but explained that the engagement of NMRs/DLRs by the Paradeep N.A.C. was pursuant to the directions of the Court. Mr. Mohanty next submitted that Sub-section (2) of Section 401, empowered the State Government to communicate to the Municipality the grounds on which they propose to dissolve the Municipality fixing a reasonable period for the Municipality to show cause against such proposal, but the State Government in this case has not communicated the petitioners the grounds on which the dissolution of the Paradeep Municipality was proposed and instead, the Director, Municipal Administration by his notice dated 26.12.2001 has communicated the grounds. Mr. Mohanty vehemently argued that although Section 408 of the Orissa

Municipal Act empowers the State Government to delegate its power under the Act to any person or authority, no such delegation has been made by the State Government in favour of the Director of Municipal Administration to exercise the power of the Government u/s 401 of the Act.

3. Mr. A. Routray, learned Addl. Government and Mr. B. M. Patnaik, learned counsel appearing for the State Government and the Executive Officer, Paradeep Municipality, respectively submitted that reasonable opportunity of hearing had been given to the petitioners before the impugned notification was issued dissolving the Paradeep Municipality. They referred to the notification in Annexure-8 series to show that the Director, Municipal Administration, named therein, has been empowered u/s 408 of the Orissa Municipal Act to exercise all the powers of the State Government and submitted that the Director of Municipal Administration had thus the power to issue notice to show cause to the petitioners and hear the petitioners.

4. Article 243U(1) of the Constitution along with its Proviso are quoted herein below :

"243U(1). Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer :

Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution."

It is patently clear from the aforesaid provisions of the Constitution that where a Municipality is sought to be dissolved before the period of five years from the date appointed for its first meeting under any law for the time being in force, the Municipality shall be given reasonable opportunity of being heard before its dissolution. The law for dissolution of a Municipality in Orissa before completion of five years is provided in Section 401 of the Orissa Municipal Act. Although Section 401 does not provide for an opportunity of hearing to be given to the Municipality, by virtue of the proviso in Article 243U(1) of the Constitution, a Municipality has a right of reasonable opportunity of being heard before its dissolution.

5. The question for decision in the present case is as to whether Paradeep Municipality has been given this reasonable opportunity of being heard before its dissolution by the impugned notification. The petitioners, who are the Chairperson and Councillors of the Paradeep Municipality have undoubtedly been heard by the Director of Municipal Administration on 29.6.2002. But from the records, we find that the decision to dissolve the Paradeep Municipality was not taken by the Director of Municipal Administration but by the Minister, Urban Development Department. It has been held by the Supreme Court that the authority who takes the decision will have to hear a party and hearing by one authority and decision by another authority would be an empty formality. In Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport

Corporation and Another, , K. Subba Rao, J. delivering the judgment for the majority of Judges of the Bench held :

"The second objection is that while the Act and the Rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules impose a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear-up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We, therefore, hold that the said procedure followed in this case also offends another basic principle of judicial procedure."

Thus, hearing by the Director of Municipal Administration and decision by the Minister, Urban Development Department on the proposal to dissolve the Paradeep Municipality do not meet the requirements of reasonable opportunity of hearing before dissolution of the Municipality and for this reason alone, the impugned notification is liable to be quashed for violation of the proviso to Article 243U(1) of the Constitution.

6. We accordingly quash the impugned notification and direct that the petitioners will be given an opportunity of hearing by the authority of the State Government who will take a decision on the proposal to dissolve the Paradeep Municipality. Such authority of the State Government will give notice to the petitioners fixing the date of hearing and on receipt of such notice, the petitioners may make their submissions that the petitioners have not been served with any notice by the State Government under Sub-section (2) of Section 401 of the Orissa Municipal Act and that the irregularities mentioned in the show cause notice for which the Municipality is proposed to be dissolved are not irregularities committed during their period and that the engagement of the NMR/DLR workers were pursuant to the direction of this Court. Now that the impugned notification dissolving the Paradeep Municipality has been quashed, the Collector, Jagatsinghpur will hand over charge to the Chairperson of Paradeep Municipality forthwith.

7. The writ petition is allowed. No costs.

M. Papanna, J.

8. I agree.