
(1994) 01 OHC CK 0018

In the Orissa High Court

Case No : Original Jurn. Case No. 7247 of 1993

Subhash Ch. Sethy and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 27-01-1994

Acts Referred:

Orissa Panchayat Samiti Act, 1959 — Section 46B, 46B(4)

Citation : AIR 1994 Ori 169

Hon'ble Judges : G.T. Nanavati, Acting C.J.; P.C. Misra, J

Bench : Division Bench

Advocate : S. Misra, for the Appellant; S.K. Das, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Nanavati, A.C.J.

1. The petitioners are elected members of the Odagaon Panchayat Samiti. 15 members out of 26 submitted a memorandum to the Sub-Collector, Nayagarh to convene a special meeting u/s 46-B of the Orissa Panchayat Samiti Act, 1959. The Sub-Collector fixed the meeting at 11 A.M. on 15-9-1993 in the office of the Panchayat Samiti at Odagaon. As it was not possible for him to preside over the said meeting, he authorised the Tahasildar, Khandapara to do the same. Before the meeting could be held, Orissa Ordinance No. 5 of 1993 came to be promulgated. It amended Sub-section (4) of Section 46-B with the result that the period during which such requisition was not maintainable in the case of a Chairman or Vice-Chairman was extended from one year to two years. In view of this amendment in law and the communication dated 13-9-1993 received by the Sub-Collector, Nayagarh from the Additional Secretary to the State Government, the Sub-Collector cancelled the meeting. This act of cancellation of the requisitioned meeting by the Sub-Collector is challenged in this petition.

2. What is contended by the learned Advocate for the petitioners is that the

Ordinance being prospective in operation the Sub-Collector could not have lawfully cancelled the said meeting as the petitioners had acquired a right by then to get the proposed resolution considered at the said requisitioned meeting. It was submitted that it was pursuant to the requisition by 15 members that the meeting was convened. When such a meeting is convened, the Sub-Collector does not possess the power either to adjourn the same or to cancel it. As soon as the date of the meeting was fixed, the requisition got exhausted and, therefore, the subsequent amendment making requisition made within two years not maintainable did not apply to this case.

3. The relevant part of Section 46-B reads as under:--

"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 meetings 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 Sub-Divisional Officer or when he is unable to attend, any other Gazetted officer not below the rank of a Class II Officer of the State Civil Service authorised by him, shall preside over and conduct the proceedings of the meeting;

(e) the voting at all such meetings shall be by secret ballot;

(f) no such meeting shall stand adjourned to a subsequent date and no item of business other than the resolution for recording want of confidence in the Chairman or the Vice-Chairman shall be taken up for consideration at the meeting;

(f-1) no such resolution shall be taken up for consideration unless it has been proposed by one member and has been seconded by another member at the

meeting;

(f-2) after the resolution is taken up for consideration the member proposing the resolution may open the discussion thereon and other members may speak on the resolution in the order-in which they are called upon by the Presiding Officer:

Provided that no member shall, unless so permitted by the Presiding Officer, have the right to speak more than once and if any member who is called upon does not speak he shall not be entitled, except by the permission of the Presiding Officer to speak at a later stage of the discussion;

xxxxx (4) Without prejudice to the provisions of Sub-section (3) no requisition under Sub-section (2) shall be maintainable in the case of a Chairman or Vice-Chairman, as the case may be, before the expiry of one year from the date on which such Chairman or Vice-Chairman enters office."

On an analysis of this section, it becomes clear that Sub-section (1) confers right on the members of the Samiti to call upon the Sub-Collector to specially convene a meeting for the purpose of passing a vote of no-confidence against the Chairman or Vice-Chairman of the Samiti. Sub-section (2) is mainly a procedural section and Clauses (a) to (f-2) thereof provide the procedure to be followed in convening the meeting and conducting the affairs at such meeting. Sub-section (4) puts a limitation on the right conferred by Sub-section (1) by providing that no requisition shall be maintainable in the case of a Chairman or Vice-chairman before the expiry of the period specified therein from the date on which such Chairman or Vice-Chairman enters office. As stated above, the said period was formerly one year, but with effect from 8-9-1993 because of the amendment made by the said Ordinance, it in two years.

4. The contention raised on behalf of the petitioners is that the petitioners had acquired a vested right to get the proposed resolution considered at the meeting which was fixed on 15-9-1993. In our opinion, the petitioners cannot be said to have acquired such a vested right, because no such absolute right is conferred on them by any part of Section 46-B. As we have already pointed out, the right to get a meeting specially convened is a conditional right. Moreover, the said right is only to get a meeting convened. The right to consider and pass a resolution would come into existence only when the meeting is actually held. Moreover, Clause (c) of Sub-section (2) requires that along with the notice for the meeting a copy of the requisition is also required to be supplied to the members at least seven clear days before the date fixed for the meeting. This would suggest that the requisition does not get exhausted the moment the date is fixed by the Sub-Collector for convening the meeting. It remains open for consideration. Though there is no specific provision in the section, it can safely be inferred that the meeting fixed on the basis of the said requisition can be cancelled if the requisition is found to be not maintainable or not supported by the required number of members. Even if we proceed on the basis that the Sub-Collector does not have power to cancel the meeting on such grounds,

nonetheless it will be open to the members to consider the said requisition and not to proceed further with the consideration of the resolution if the requisition is found to be either not maintainable or invalid for any other reason. Therefore, considering the nature of the rights conferred by Section 46-B and the fact that Sub-section (2) is mainly a procedural section, it cannot be said that as soon as a date for the meeting is fixed the members convening such a meeting acquire a vested right to get the proposed resolution considered at the requisitioned meeting. We are of the view that though the Ordinance was prospective in nature, the amendment made in Sub-section (4) of Section 46-B would apply even to those cases where the meeting was not held though the same was fixed pursuant to a requisition which was till the date of the amendment maintainable. As a result of the amendment, the requisition which was till then maintainable become not maintainable if the same was made within two years from the date on which the Chairman or the Vice-Chairman had entered office.

5. The learned counsel for the petitioners cited the decision of the Supreme Court in A.A. Calton Vs. Director of Education and Another, in support of his contention that the amendment has no effect on the proceedings already started and completed for the purpose of convening a meeting for considering the proposed vote of no-confidence. Therein the Supreme Court has observed (at p. 1145 of AIR) :--

".....it is equally well settled that no retrospective effect should be given to any statutory provision so as to impair or take away an existing right, unless the statute either expressly or by necessary implication directs that it should have such retrospective effect."

In that case what was held was that the process of selection u/s 16-F of the U. P. Intermediate Education Act commencing from the stage of calling for applications for the post up to the date on which the Director became entitled to make the selection u/s 16-F was an integrated one. At every stage in that process certain rights were created in favour of one or the other of the candidates. For that reason the said provision was not construed as a procedural provision and in that context the Supreme Court held that the proceedings for selection initiated by the Director had to be continued in accordance with law as it stood at the commencement of the said proceedings. We have already pointed out the true nature of the rights which the members have u/s 46-B and the fact that the relevant part of Sub-section (2) is a procedural provision. Therefore, this decision cannot be of any help to the petitioners. Another decision relied upon by the learned counsel for the petitioners was in the case of Krushna Chandra Vs. Commr. of Endowments and Others, . It merely lays down a general rule regarding interpretation that it is a fundamental rule of construction that no statute shall be construed to have a retrospective operation unless such a construction appears very clear in the terms of the Act or arises by necessary and distinct implication. An offshoot of this rule is that if the enactment is expressed in the language which is fairly capable of either interpretation, it ought

to be construed as prospective only and that there is a presumption against a retrospective operation if, when so operated, it would prejudicially affect the vested rights or the legality of past transactions. On the view we have taken as regards the nature of the provision contained in Section 46-B and the nature of rights it confers on the members of a Samiti, this decision can be of no help to the petitioners.

6. In order to support his contention that a requisition does not get exhausted as soon as the date for the meeting is fixed, the learned Government Advocate relied upon the decision of this Court in *Bishnu Charan v. State of Orissa* 43 (1977) CLT 165 : (AIR 1977 NOC 139). Therein, while considering the scheme of the Act, this Court observed as under :--

"Undoubtedly, there is no provision for withdrawing a requisition. The scheme of the Act seems to be that once a requisition is given, there should be no interference of any other agency and the propriety of the requisition has to be considered in the meeting of the Panchayat. That, indeed, is conducive to the democratic process and once a valid requisition is there, there is no scope for withdrawal and it has to be tested at the meeting."

This decision does support our conclusion that the requisition does not get exhausted when the date for the meeting is fixed and it remains open for consideration at the meeting. The learned Government Advocate has also placed reliance upon the Full Bench decision of this Court in *Sarat Padhi Vs. State of Orissa and Others*, . That was a case under the Orissa Grama Panchayat Act, 1964. The question which arose for consideration in that case was whether the conditions laid down in Section 24 which provides for the manner of passing of vote of no-confidence against a Sarpanch or Naib Sarpanch are mandatory or not. This Court held two of the conditions as mandatory and one as directory. With respect to the breach of these two mandatory conditions, this Court observed that if there is any breach of these two conditions, then the meeting will be invalid without any question of prejudice. This observation was relied upon by the learned Government Advocate to support his contention that the question whether the meeting is validly convened or not remains open even after the date for convening such meeting is fixed and in that sense it cannot be said that the requisition gets exhausted as soon as a date is fixed for the meeting. In view of these two judgments relied upon by the learned Government Advocate and what we have already stated above, we hold that if the requisition, which was maintainable when made and when the date for the meeting was fixed became not maintainable before the meeting could be actually held, and, therefore, the Sub-Collector was justified in not holding the meeting on the date fixed for it. It would have been an invalid meeting since it was to be held pursuant to the requisition which had become not maintainable. We, therefore, dismiss this petition. There wilt be no order as to costs.

P.C. Misra, J.

7. I agree.