

**ORISSA HIGH COURT: CUTTACK**

**W. P.(C) NO.12836 OF 2010**

In the matter of an application under Articles 226 and 227 of the Constitution of India.

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Indumati Nayak	...	<b>Petitioner</b>
<b>-Versus-</b>		
State of Orissa and others	...	<b>Opp. Parties</b>

For Petitioners : M/s. Manoj Ku.Mishra,  
P.K.Das & D.Tripathy.

For Opp. Parties : Mr. D.K.Mishra,  
Addl. Govt. Advocate.

Mr. B.D.Pradhan  
(For intervenors).

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Decided on 30.07.2010.  
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**P R E S E N T :**

**THE HONOURABLE SHRI JUSTICE M. M. DAS**

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***M.M. Das, J.*** The petitioner in this writ application has called in question the notice dated 21.07.2010 under Annexure – 1 issued by the Sub-Collector, Athagarh convening a meeting on the no confidence motion against the petitioner, who is the Chairman of the Panchayat Samiti, under Section 46 - B of the Orissa Panchayat Samiti Act, 1959 (for short 'the Act') on 01.08.2010 at 11 A.M.

2. Mr. Manoj Mishra, learned counsel for the petitioner submits that the proposed resolution annexed to the notice is not in compliance with Section 46 - B (2) (f-1) of the Act and, therefore, the notice being defective and contrary to the Act should be quashed. He contends that the proposed resolution annexed to the notice does not show that the same was in accordance with the above provision of the Act as nothing from the said proposed resolution appears to indicate that the same was proposed by one member and has been seconded by another member at the meeting. He, therefore, contends that the said resolution cannot be considered to be a proposed resolution, as contemplated under the Act.

3. Mr. B.D. Pradhan, learned counsel for the intervenors- Panchayat Samiti members submits that Section 46 - B (2) (f-1) of the Act operates during the vote of no confidence meeting and, as such stage has not come, question of compliance of the said provision does not arise at all.

4. Mr. D.K. Mishra, learned counsel for the State supporting such contention of Mr. Pradhan, further submits that vote of no confidence against the Chairman or Vice-Chairman of the Samiti can be convened by the Panchayat Samiti members, if they have lost confidence on the Chairman. If majority of them have lost confidence on the Chairman, process of initiating a vote of no

confidence should not be interfered with by making strict application of law, as the same would act in derogation of the democratic process. Once a Chairman has lost confidence of the majority of the Samiti members, he loses the right to continue as a Chairman of the Samiti. If on a broad analysis, it is found that the majority of the members of the Samiti had intended to hold a no confidence motion, the same should be tested in the vote of no confidence meeting convened for the purpose by the Sub-Collector.

5. Reliance has been placed by Mr. Manoj Mishra, learned counsel for the petitioner on the decision in the cases of ***Rabi Narayan Jani vs. State of Orissa and others*** (2006) (Supp.1) OLR 502 and ***Smt. Kamala Tiria vs. State of Orissa and others***, 91 (2001) CLT 159 in support of his contention.

In the case of Rabi Narayan Jani (Supra), a Division Bench of this Court was dealing with the petition where notice to face the no confidence motion against the petitioner was under challenge, inter-alia, on the ground that there is no valid resolution and requisition under Section 46 - B of the Act as to convene the meeting for no confidence motion. The Division Bench examining the question as to whether the provision of Section 46 - B (2) (f-1) of the Act has been followed or not, in the facts of the said case, noted that though the said provision says that no resolution shall be taken up for consideration unless it has been proposed by one

member and has been seconded by another member meaning that at least one member should propose the resolution and at least one member should second it, in the facts of the said case, as it was found that instead of one member, more than one member have seconded it, in that context, it was held that such a resolution does not become inoperative. The question as to whether Section 46 – B (2) (f-1) of the Act applies to a resolution passed by the Samiti for requisitioning a no confidence motion has not been examined in the said decision. No doubt, in the said decision also, the notice convening the no confidence motion was under challenge but no question was raised before the Division Bench as to at what stage compliance of Section – 46 - B (2) (f-1) of the Act is to be made.

In the case of Smt. Kamala Tiria (Supra), the facts of the case were that the petitioner therein was the President of the Zilla Parishad. While she was continuing as such, the District Magistrate, Mayurbhanj issued notice notifying that a special meeting would be convened in the Collector's Conference Hall to consider the no confidence motion against her. Along with the said notice, copy of the requisition and minutes of the discussion of the meeting of the Zilla Parishad were enclosed. Many members of the Zilla Parishad were taken aback to find their signatures in the recorded minutes because they were not present in any such meeting and they did not put their signature in any recorded minute

of the meeting of that day. The Ex-Officio members who had no right to vote in the motion of no confidence meeting were invited to attend the meeting. The petitioner made a representation to cancel the said meeting. Despite such representation, the meeting was held and it was alleged that the Collector without holding any discussion on the resolution illegally and arbitrarily declared that the resolution expressing want of confidence in the petitioner therein was passed. Initially in an earlier writ petition, this Court directed the Government to consider the grievance of the petitioner. The Government rejected the said claim. In such peculiar facts of the said case, as narrated above, this Court upon analyzing the same, recorded that this being the factual position, there is no compliance of sub-clause (a) of sub-section – (2) of Section 39 of the Zilla Parishad Act and, accordingly, allowed the writ petition restoring the petitioner back to the position of President of Zilla Parishad. No ratio was laid down in the said case with regard to the manner in which a proposed resolution is to be passed for convening a no confidence motion under the Zilla Parishad Act.

In the case of ***Jagadish Pradhan and others vs. Kapileswar Pradhan and others***, 64 (1987) CLT 359, which is relied upon by Mr. Pradhan in support of his contention that the notice issued for holding no confidence meeting is valid and should not be interfered with, lays down that Section 46 – B (2) of the Act

provides the procedure to be followed for passing a vote of no confidence by the members of the Panchayat Samiti. It does not provide any proforma of such resolution. The State Government did not consider that a form would be necessary for the requisition to be sent to the Sub-Divisional Officer or for the proposed resolution along with such requisition or for the notice by the Sub-Divisional Officer. In the absence of rules prescribing forms for the purpose, the requirement of Section 46 – B (2) of the Act would be satisfied, if they are substantially complied with. In the context of Section 46–B (2) of the Act, it would mean a written request to the Sub-Divisional Officer demanding his performance of duty entrusted to him by the Legislature under Section 46 – B of the Act.

6. Learned Additional Government Advocate submits that another Division Bench of this Court in the case of ***Padmini Nayak vs. State of Orissa and others***, 2005 (Supp.) OLR 917, while dealing with Section 24 (2) (a) of the Orissa Grama Panchayat Act, 1964 distinguishing the case of Smt. Kamala Tiria (Supra) on the facts and considering the resolution passed in the said case for convening a meeting for vote of no confidence against the Sarpanch, observed that the said resolution can be broadly accepted as the proposed resolution which the signatories-members intended to carry out in the meeting to be held on their requisition. Section 46 – B of the Orissa Panchayat Samiti Act, 1959 reads as follows:-

**“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 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 (Sub-Deputy Collector), authorized 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.;

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7. A bare reading of sub-section (2) of Section 46 – B of the Act would show that sub-section (2) (a) & (b) refer to convening a no confidence motion meeting. Clause (c) refers to the action to be taken by the Sub-Collector on receiving such a requisition. Clause – (d) relates to a situation where the Sub-Collector cannot attend the meeting of no confidence and can delegate his power and the other sub-clauses relate to the procedure to be adopted during the no confidence motion.

8. It is, therefore, clear that the provision of Section 46 – B (2) (f-1) of the Act is not required to be complied with in the meeting to be convened for requisitioning a no confidence motion, but is to be adopted during the course of the no confidence motion.

9. Examining the facts of the present case in the light of the above discussion, I find that the resolution and requisition attached to the notice under Annexure – 1 has been signed by 53 members out of 68 members and the resolution discloses that the signatories have lost confidence on the petitioner-Chairman. I, therefore, find no defect in the notice to hold no confidence motion



on 01.08.2010 which according to me should be held as proposed and scheduled.

10. The writ application is accordingly dismissed.

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***M.M. Das, J.***

***Orissa High Court, Cuttack.  
July 30th , 2010/Biswal.***





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