

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO.862 OF 2011

BASANTI BEHERA Appellant (s)  
VERSUS  
STATE OF ORISSA & ORS. Respondent(s)

O R D E R

This appeal is directed against the judgment and order dated 6th May, 2010, passed by the Orissa High Court, dismissing the appellant's Writ Petition(C)No.11716 of 2009, wherein the challenge was to the notice issued by the Sub-Collector for holding a meeting of 'no confidence' against the appellant.

2. As will appear from the materials on record, the appellant was elected as Sarpanch of the Bangarada Gram Panchayat in the month of March, 2007. Subsequently, in the month of July, 2009, the 11 members of the Gram

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Panchayat having lost confidence in the appellant, met on 23rd July, 2009, and passed a resolution expressing their 'no confidence' against the appellant. The said resolution, along with affidavits submitted by the said 11 members were forwarded by the Naib Sarpanch to the Sub-Collector, Ghumusur Bhanjanagar on 25th July, 2009, with a request to convene a meeting for the purpose of adopting the 'no confidence' resolution against the appellant. Pursuant thereto, a meeting of the Gram Panchayat was convened on

21st August, 2009, to consider the question of 'no confidence' which had been expressed by 11 of the members of the 15 members Gram Panchayat, against the appellant. On the said date, at the meeting, the proposed resolution was adopted by the said 11 members and, thereafter, in accordance with the provisions of Section 24(1) of the Orissa Grama Panchayats Act, 1964. The said resolution was forwarded by the Sub-Divisional Officer to the Collector, who caused the same to be published on the notice board which had the effect of removal of the Sarpanch and he would be deemed to have vacated the office.

3. Aggrieved thereby, the appellant filed the aforesaid writ petition, challenging the manner in which the No Objection Motion had been passed in the meeting convened by

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the Sub-Divisional Officer for the said purpose on 21st August, 2009. It was the case of the appellant before the High Court that proper Requisition Notice had not been given in accordance with Section 24(2)(a) of the aforesaid Act, which requires that no meeting of the Gram Panchayat for No Confidence Motion against the Sarpanch or the Naib-Sarpanchas could be convened except on a requisition signed by at least one-third of the total membership of the Gram Panchayat, along with a copy of the resolution proposed to be moved at the meeting. The said objection taken on behalf of the appellant herein was not entertained by the High Court on the ground that the proposed resolution had been signed by more than one-third members of the Gram Panchayat and, accordingly, the same could be treated as a requisition for the purpose of Section 24(2)(a) of the above Act.

4. Appearing on behalf of the appellant, Mr. V.Sivasubramanian, learned advocate, reiterated the stand taken by the appellant before the High Court. It was urged that the provisions of the Act were mandatory and,

accordingly, non-compliance of the provisions of Section 24(2)(a) vitiated the entire proceedings and the resolution adopted at the meeting of 21st August, 2009. In support of

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his submissions, learned counsel referred to the decisions of this Court in Laxmi Verma Vs. State of Maharashtra and Others, [2010(5)SCC 329], wherein while considering the requirement under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, that a Councillor could resign by tendering notice in writing in his hand addressed to the Collector, delivered in person, and signed before the Collector, this Court held that it was mandatory for the Councillor, who intended to resign, to actually sign the resignation notice before the Collector. The fact that the Councillor himself was present before the Collector and admitted his signature appended to the letter, to be his signature, was not accepted and it was observed by this Court on a complete reading of the provisions concerned, that it was mandatory for the Councillor to actually sign the letter of resignation before the Collector and not having done so, the resignation was held to be invalid. Learned counsel also referred to another decision of this Court in Union of India and Others Vs. A.K. Pandey, [2009(10)SCC 552], which was a case where General Court Martial proceedings were to be commenced against the respondent. According to the rules, the said General Court Martial could be convened only after the expiry of a period

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of 96 hours after arraignment of the officer concerned. On account of the fact that the said officer pleaded guilty to the charge against him before the said period of 96 hours, this Court held that the General Court Martial had wrongly convicted the officer and, accordingly, set aside the decision taken by the General Court Martial. Learned

counsel submitted that when the provisions in the Statute were mandatory and were expressed in clear terms without any ambiguity, the same had to be followed as otherwise the consequences would stand vitiated. Learned counsel prayed that since in the instant case, the provisions of Section 24(2)(a) had not been strictly followed in that only one member of the Gram Panchayat had signed the requisite notice, the meeting as well as the resolution adopted therein was void and was liable to be declared as such.

5. On the other hand, Mr. Tripathy, learned advocate, appearing for the State, contended that since 11 members of the Gram Panchayat had, in fact, affirmed the affidavits, which were annexed to the Requisition Notice signed by the Naib-Sarpanchas, it must be held that there was substantial compliance with the provisions of Section 24(2)(a) and that the High Court had not committed any error in dismissing the writ petition filed by the appellant.

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6. Having considered the submissions made on behalf of the respective parties, we are inclined to accept the submissions of Mr. Tripathy, notwithstanding the fact that even if the provisions of Section 24(2)(a) are treated to be mandatory in nature, the requirements, in our view, appear to have been satisfied.

7. This is a case where a majority of the members of the Gram Panchayat have lost confidence in the appellant functioning as the Sarpanch of the Gram Panchayat. Had there not been affidavits affirmed by the said members, which were enclosed with the requisite notice, possibly the submissions advanced by Mr. Sivasubramanian could have had substance. However, the intention of the majority of the members of the Gram Panchayat appear to be clear and since the affidavits were enclosed along with Requisition Notice, the same may be treated as being part of the Requisite Notice itself. Accordingly, in our view, there has been

substantial compliance with the provisions of Section 24(2)

(a) and the High Court rightly rejected the writ petition.

appellant's

8. The appeal is, therefore, dismissed, but there will

be no orders as to costs.

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.....J.  
(ALTAMAS KABIR)

.....J.  
(J. CHELAMESWAR)

NEW DELHI;  
November 23, 2011.

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ITEM NO.101

COURT NO.2

SECTION XIA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO.862 OF 2011

BASANTI BEHERA

Appellant (s)

VERSUS

STATE OF ORISSA & ORS.

Respondent(s)

(With appln(s) for early hearing and with prayer for interim relief and office report)

Date: 23/11/2011

This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR  
HON'BLE MR. JUSTICE J. CHELAMESWAR

For Appellant(s)

Mr. V. Sivasubramanian, AOR  
Mr. Sachin Das, Adv.

For Respondent(s)

Mr. Suresh Chandra Tripathy, AOR  
Mr. Mohit Kumar Gupta, Adv.

UPON hearing counsel the Court made the following  
O R D E R

The appeal is dismissed in terms of the signed order, but there will be no orders as to costs.

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(Sheetal Dhingra)

COURT MASTER

[Signed order is placed on the file]

(Juginder Kaur)

Assistant Registrar