

(2011) 08 OHC CK 0019
In the Orissa High Court
Case No : Writ Petition (C) No. 16510 of 2007

Amiya Kumar Pani

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Grama Panchayat Act, 1964 — Section 115(2)

Citation : (2011) 112 CLT 529

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Advocate : Dayananda Mohapatra, D.K. Sahoo, M. Mohapatra, G.R. Mohapatra and S.P. Nath, for the Appellant; Samir Kumar Mishra, M.R. Dash, S.K. Samantaray, Public Prosecutor Sahu, S. Mohapatra, A. Kejriwal, M.R. Mohapatra, P.K. Mohapatra, B.S. Samal and G.B. Singh A.G.A., for the Respondent

Judgement

M.M. Das, J.—2.8.2011 - Heard Mr. Mohapatra, Learned Counsel for the Petitioner & the Learned Counsel for the State as well as Mr. S.K. Mishra, Learned Counsel appearing for the intervenor.

2. The Petitioner has called in question the Order Dated 29.12.2007 under Annexure-7. Facts reveal that the Petitioner was the Sarpanch for about three years from 1993 to 1995. Thereafter he was again elected as Sarpanch in the General Election held in the Grama Panchayat in the year, 2007. Basing on a report of the Collector, the Government passed the order of suspension, which is as follows:

GOVERNMENT OF ORISSA; PANCHAYATI RAJ DEPARTMENT ORDER No.LS-1-193/07-43023/dated 29.12.2007

Whereas from the report of the Collector, Jagatsinghpur vide his letter No. 1548 dated 21.9.2007, it appears to the State Government that Shri Amiya Kumar Pani, Sarpanch of Badabalikani G.P. under Kujang Block of Jagatsinghpur district has wilfully violated the provisions of the Orissa Grama Panchayat Act, 1964

(Orissa Act 1 of 1965) & the rules made thereunder & abused his powers vested under the said Act.

And whereas from the allegations, the State Government are satisfied that further continuance of Shri Amiya Kumar Pani in the office of the Sarpanch will be detrimental to the interest of the inhabitants of the said Badabalikani Grama Panchayat.

Now, therefore, in exercise of the powers conferred by sub-Section (2) of Section 115 of the said Act, the State Government have been pleased to order that Shri Amiya Kumar Pani be & is hereby placed under suspension from the office of the Sarpanch of the said Badabalikani Grama Panchayat with immediate effect pending initiation of proceedings.

By order of the Governor Sd/- R.K. Choudhury Director (P.R.) & Addl. Secy. to Govt.

3. The report of the Collector, Jagatsinghpur has been annexed as Annexure-5. From the report of the Collector, Jagatsinghpur, it appears that almost all the allegations relate to the years, 1994, 1995 & 2004 except one allegation that the Petitioner has manipulated the Grama Panchayat records during his present tenure as Sarpanch & misappropriated Rs. 40,000 from the S.G.R.Y. fund by giving the amount as advance to one Ranjan Kumar Beura, who was the Executive Officer-cum-V.L.W. of the Grama Panchayat.

4. Mr. Mohapatra, Learned Counsel for the Petitioner submits that the said amount was given for purchase of furniture & has already been accounted for.

5. Learned Counsel for the State relying upon the decision in the case of Jagannath Bag Vs. Collector and Others, , submits that the Petitioner should be directed to approach the Government by filing an appeal & the Writ Petition should be dismissed in view of the alternative remedy available to him.

6. No doubt, a provision is made under the Act for the Sarpanch to make an application for revocation of the order of suspension, but, in the instant case, as I find that the impugned order suffers from unreasonableness, which is based on the report of the Collector where the allegations were made with regard to the incidents much prior to the Petitioner being elected as a Sarpanch in the year, 2007 & no reason has been assigned in the order of suspension except quoting the provision of the Act that is his continuance in the office of the Sarpanch will be detrimental to the interest of the inhabitants "of the said Grama, I am of the view that in such circumstance, this Court should exercise its jurisdiction under Article 226 of the Constitution, without insisting upon the Petitioner to approach the Government for revocation of the order of suspension.

7. Mr. Mohapatra, Learned Counsel for the Petitioner relying upon the decision in the case of Choudhury Pradhan v. State of Orissa & ors. 2009 ILR Cutt 204 submits that in a similar situation this Court discussing the power of employer in suspending an employee & interpreting the provisions of Section 115(2) of the

O.G.P. Act, 1964 held that a Sarpanch being an elected representative of the people of the Grama, the authority concerned should assign reasons for taking a decision of suspension of a Sarpanch & should not pass an order of suspension in a routine manner but with caution after due circumspection. In the said decision, this Court finding that no reason has been assigned in the order of suspension, as in the instant case, quashed the said order.

8. Mr. Mohapatra further relied upon the decision in the case of Subash Chandra Jena Vs. State of Orissa and Others, , where a Division Bench of this Court in the facts of the said case, where allegations were made against the said Sarpanch with regard to commission of acts during his tenure as a Sarpanch for a previous period, categorically laid down that in case of Sarpanch, who has committed a prejudicial act in the past, it cannot be said that he wilfully has omitted or refused to carry out or violated the provisions of the Act or the Rules or orders made thereunder or abused the powers, rights & privileges vested in him or acted in a manner prejudicial to the interest of Grama. Such act committed by him in the past i.e. during his earlier tenure as Sarpanch, cannot be a basis to exercise jurisdiction u/s 115 of the Act & suspended him from the office of the Sarpanch.

9. In view of such facts & the law as laid down by this Court, the Order Dated 29.12.2007 under Annexure-7 as quoted above, cannot be sustained & is accordingly quashed. No action shall be taken against the Petitioner pursuant to the report of the Collector, Jagatsinghpur as at Annexure-5. If the Collector, Jagatsinghpur so desires, he may submit a fresh report in relation to the alleged objectionable action committed by the Petitioner-Sarpanch after he was elected as Sarpanch in the year, 2007.

10. The Writ Petition is accordingly disposed of.

11. Urgent certified copy of this order be granted on proper application.