

**(2006) 02 OHC CK 0008**

**In the Orissa High Court**

**Case No : Writ Petition (C) No. 12189 of 2005**

Amiya Ray and Another

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

**Date of Decision : 28-02-2006**

**Acts Referred:**

Constitution of India, 1950 — Article 243  
Orissa Grama Panchayat Act, 1964 — Section 109, 115, 116

**Citation :** (2006) 101 CLT 563 : (2006) 1 OLR 491

**Hon'ble Judges :** P.K. Tripathy, J; A.K. Parichha, J

**Bench :** Division Bench

**Advocate :** Upendra Kumar Samal, B.R. Barik, C.D. Sahu, N.P. Ray and M.R. Mohapatra, for the Appellant; Aswini Kumar Mishra, Std. Counsel, for the Respondent

**Final Decision :** Allowed

## Judgement

1. Heard and on consent of the parties, the writ petition is disposed of at the stage of admission.

2. Petitioner No. 1 is the Sarpanch and petitioner No. 2 is the Secretary of Palimi Grama Panchayat in the district of Kendrapara. They challenge the order-Annexure-1 communicated to them by Memo No. 740 dated 12.8.2004 from the office of the District Panchayat Officer, Kendrapara, wherein the following order has been passed:

Collector, Kendrapara has been pleased to withdraw the financial powers of Sarpanch and Secretary of Palimi G.P. due to violation of provision of O.G.P. Act.

3. Contention of petitioners is that Collector and the District Panchayat Officer, Kendrapara have no power and authority under the Orissa Grama Panchayat Act, 1964 (hereinafter referred to as "the Act") and the Rules made there under to pass such order. A counter affidavit has been filed on behalf of the opposite party No. 2 i.e. the Collector, Kendrapara. The Block-Development Officer, Aul Block

has signed that counter affidavit. The said Block Development Officer is the opp. party No. 5. In the counter affidavit, inter alia, it has been alleged that petitioners are not co-operating with the officers deputed for verification of records of the Panchayat, inspection of the accounts and other matter connected with the said Panchayat and also avoiding to co-operate with the Collector and his subordinate officers in the inquiry into the allegations made by some of the Ward Members. While stating so, learned Addl. Govt. Advocate argues that Section 109 of the Act is the relevant provision which empowers and authorizes Collector to pass an order of the nature of Annexure-1 so as to uphold the rule of law and discipline and control unruly Sarpanches and Secretaries of Grama Panchayats.

4. Learned Counsel for petitioners in the above context relies on the case of Satish Chandra Das Adhikari and Anr. v. State of Orissa, represented by the Collector, Balasore and Ors. 1987 (II) OLR 538 in which in a different fact situation while considering the nature of power u/s 109 of the Act, it has been held that-

...Undoubtedly u/s 109, the Collector or such other officer or person specially authorized in that behalf by the State Government shall exercise general powers of inspection, supervision and control over the exercise of powers, discharge of duties and performance of functions by the Grama Panchayat under the provisions of the Act. This Section confers a general power on the concerned authority so as to advise the Grama Panchayat and to have a watchful control to see if it is exercising its powers, discharging its duties and performing its functions properly or not. In case it is found that the Grama Panchayat has exceeded its powers or is misusing its powers and it is not discharging its duties and functions properly for the benefit of the people, the prescribed authority can swing into action in exercise of powers u/s 109 so as to take disciplinary action contemplated in Sections 115 and 116 of the Act....

(quoted from paragraph-5 of the judgment)

5. While not disputing to the aforesaid interpretation of Section 109 of the Act petitioners state that impugned order Annexure-1 was passed by Collector exceeding the limit of jurisdiction u/s 109. Learned Additional Government Advocate takes shelter of that statutory provision and argues that though under Chapter IX (Article 243) of the Constitution of India mandate is to breed democracy at the lowest level i.e. at village level, yet to ensure control and discipline provisions of the Section 109 of the G.P. Act can be adhered to.

6. Sustenance of democracy is not a mere slogan to be chorused, but to be followed and implemented with all sincerity. Panchayatraj system being democracy at grass root level peoples' representatives of the Panchayat cannot be thrown out arbitrarily by officials of the Government nor can the financial power of Sarpanch be withdrawn whimsically as in the present case, since that will deprive the Sarpanch and the Panchayat of planning and implementing the

developmental work. Therefore, the aforesaid order of Collector communicated to the petitioners by the District Panchayat Officer does not stand to sense of scrutiny in the perspective of sustenance of democratic system at Panchayat level. On the other hand, if the Collector and his subordinate authorities find that petitioners as Sarpanch and Secretary respectively are doing things which are detrimental to the institution and to the Panchayat, then as suggested by this Court in the above quoted passage, appropriate action should be taken Under Sections 115 and 116 of the Act. There is no prohibition for such action by the Collector and the State Government in appropriate cases. If the Collector finds that a case for action u/s 115 and/or 116 of the Act is not made out and yet the Sarpanch and the Secretary are to be disciplined, then he should pass appropriate order for exercise of the financial power by Sarpanch and the Secretary with prior approval of a responsible officer like the District Panchayat Officer/Grama Panchayat Extension Officer, as the case may be. Since the order Annexure-1 was not prompted by good reasoning and provisions of the statute, we quash the order annexure-1 leaving it for consideration of the Collector or the State Government, as the case may be and for appropriate action against the petitioners, if required. We make it clear that on the factual aspect, we have not expressed any opinion on the merit of the case, save and except that the action must be in conformity with the spirit of the Constitution and the provision under the Grama Panchayat Act or any other law which is relevant for the purpose.

7. The writ petition is accordingly allowed. No costs.