

(1987) 08 OHC CK 0037

In the Orissa High Court

Case No : Original Jurn. Case No. 1361 of 1985

Baikunthannath Mohanty

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 24-08-1987

Acts Referred:

Orissa Grama Panchayat Act, 1964 — Section 115(1)

Citation : AIR 1988 Ori 150 : (1988) 66 CLT 597

Hon'ble Judges : S.C. Mohapatra, J; R.C. Patnaik, J

Bench : Division Bench

Advocate : R. Mohanty and Debasis Das, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.C. Patnaik, J.—A question of some importance relating to the functioning of democracy falls for decision in this writ application under Articles 226 and 227 of the Constitution, filed by a Sarpanch against an order of suspension passed by the Collector under the provision of Section 115(1) of the Orissa Grama Panchayat Act, 1964 (Orissa Act 1 of 1965).

2. The petitioner, the Sarpanch of Purunabandhagoda Grama Panchayat in the district of Keonjhar, was suspended from office by order of the Collector dt/-28-6-1985 as per Annexure-1. On allegations --particulars being annexed that he violated, omitted or refused to carry out the provisions of the Act, the Rules or the Orders made thereunder and abused the powers, rights and privileges vested in him and acted in a manner prejudicial to the interest of the inhabitants of the Grama and his further continuance was detrimental to the interest of the Grama Panchayat and the inhabitants of the Grama. The petitioner alleged that the order of suspension came as a surprise to him as at no point of time he had violated the provisions of law. His suspension from office was mala fide and contrary to the provisions of the Act.

3. In the return submitted by the opposite parties, the assertions of the petitioner were refuted. It was averred that the petitioner as Sarpanch violated the various provisions of the Act, the rules and the orders made thereunder and acted in a manner detrimental to the interest of the Grama Panchayat and also disobeyed the direction issued by the higher authorities from time to time. As the petitioner assailed the order on the ground that the Collector did not have the report of the Sub-Divisional Officer before him as required by Sub-section (1) of Section 115 on the basis whereof the impugned action was taken, in the return submitted, the opposite parties, referred to the report of the Sub-Divisional Officer and annexed the same as Annexure 2.

4. The allegations against the petitioner have been summarised in para 3 of the counter affidavit in sub-paras (a), (b), (c) and (d) and they are as under : --

"(a) He has violated the provisions of the Section 94(2) of the Orissa Grama Panchayat Act, 1964 by retaining excess cash in hand beyond the prescribed limit fixed by the Collector.

(b) He has arbitrarily cancelled the lease of Gadhua Pokhari at village Karadapal by adopting a resolution disobeying the orders of the Sub-Divisional Officer, Anandapur bearing No. 5696 dt/- 18-10-1984 served through the Block Development Officer, Ghasipura.

(c) In absence of any statutory provision in the Orissa Grama Panchayat Act, 1964. and rules thereunder, the petitioner in the capacity of the Sarpanch, has granted an advance of Rs. 1,000/- to the Grama Panchayat Secretary and as such acted (upon) outside his jurisdiction.

(d) He has failed to realise the security deposit from the Grama Panchayat Secretary violating the provisions of Rule 215(a) of the Orissa Grama Panchayat Rules, 1968."

It is, therefore, unnecessary for us to reproduce the report of the S.D.O.

5. Mr. R. Mohanty, the learned counsel for the petitioner, has urged that the decision to suspend the petitioner has been actuated by mala fide, is unsupportable having regard to the allegations and some of the essential conditions of Section 115(1) are not satisfied. The learned Additional Standing Counsel, however, has urged that the satisfaction of the Collector is final and this Court does not function as an appellate Court. Re-assessment or reappraisal of the materials are outside the bounds of jurisdiction of this Court.

6. There cannot be any dispute that while adjudging the vires of an action taken u/s 115(1), this Court does not sit as an appellate court. But while exercising prerogative jurisdiction under Article 226, it is within the competence of this Court to determine if the . decision of the statutory authority was actuated by mala fides, factual or legal, and if the said decision is within the bounds of the prescribed authority, that is to say, if the action satisfied the requirements of the provision. If on the materials before the Collector, the conclusion can reasonably

be reached, this Court would not interfere but where the decision is perverse, namely, where on the materials no reasonable man would reach the conclusion arrived at by the authority, the decision would be arbitrary and mala fide and would infringe the provisions of Section 115(1).

7. Interpretation and scope of Section 115(1) arose for consideration in the case of Tarini Tripathy v. Collector, Koraput (1986) 62 CLT 548.

Section 115(1) reads as under :

"115. Suspension and removal of Sarpanch, Naib Sarpanch and member :-- (1) If on the report of the Sub-divisional Officer the Collector is of the opinion that circumstances exist to show that the Sarpanch or Naib-Sarpanch of a Grama Panchayat wilfully omits or refuses to carry out or violates the provisions of this Act, or the rules or Orders made thereunder or abuses the powers, rights and privileges vested in him or acts in a manner prejudicial to the interest of the inhabitants of the Grama and that the further continuance of such person in office would be detrimental to the interest of the Grama Panchayat or the inhabitants of the Grama, he may, by order suspend the Sarpanch or Naib Sarpanch as the case may be, from office and report the matter to the State Government."

Upon an analysis of the aforesaid provision, this Court pointed out the three essentials of Section 115(1) as follows :--

"The section, therefore, postulates three requirements :

(a) a report from the concerned Sub-Divisional Officer;

(b) satisfaction of the Collector on the basis of the report that circumstances exist to show that the Sarpanch or the Naib Sarpanch has wilfully 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 and privileges vested in him or acted in a manner prejudicial to interest of the inhabitants of the Grama; and

(c) his further satisfaction that the further continuance of the elected representative in office would be detrimental to the interest of the Grama Panchayat or the inhabitants of the Grama.

All the three requirements are cumulative. Absent any one of them, the suspension is invalid. The Collector must form an opinion of both the counts enumerated in (b) and (c) above. Existence of one is not sufficient. Every dilinquency or lapse might not satisfy the requirement of (c). Therefore, while bringing the tenure of an elected representative to an end either temporarily or prematurely, utmost care and circumspection ought to be exercised. Right of an elected representative to continue in office for the full tenure should not be lightly tinkered with by the Executive."

8. It has now become necessary for us to further elucidate the said decision and indicate the ambit of Section 115(1). It will be seen that the legislature in its

wisdom has used the word wilfully, in Section 115(1). The Collector must not only be of the opinion that the Sarpanch or the Naib-Sarpanch, as the case may be, has omitted or refused to carry out or violated the provisions of the Act, the Rules or the Orders made thereunder and abused and acted in a manner prejudicial to the interest of the inhabitants of the Grama Panchayat or the Grama, but he should also be of opinion that the Sarpanch omitted, refused or violated and abused, as the case may be, wilfully. A mere violation, omission, refusal or abuse is not enough. Omission, refusal, violation or abuse must also be wilful. The adverb "wilfully." governs and qualifies the conduct of the Sarpanch, namely, that he wilfully omitted, refused, violated the provisions of the Act or the Rules or wilfully abused the rights, and privileges vested in him or wilfully acted in a manner prejudicial to the interest of the inhabitants of the Grama Panchayat or the Grama. Unless it is found that he did so wilfully the provision would not be attracted. The legislature has not empowered the Collector to take action if the Sarpanch or the Naib-Sarpanch merely omits or refuses to carry out or violates the provisions of the Rules, the Act and the Orders or abuses the rights and privileges vested in him or acts in a manner prejudicial to the interest of the Grama Panchayat unless he so does wilfully. The object and purpose appear to be clear.

India lives in villages. Panchayatiraj is democracy in action at the grass root level. The little man in the village does not comprehend abstruse political theories. He comprehends best what he sees at his doorsteps : democracy in operation through the Panchayatiraj system. And that has direct impact on him. Panchayatiraj system is the base of the pyramid of democracy. His faith in and commitment to democracy gets strengthened or eroded from what he perceives. An iota of disenchantment is likely to destroy the tone of preaching. The stronger we make it, the better for the weal of the polity and the nation. We weaken it at our peril.

It is to be assumed that an errant Sarpanch can trample on the provisions with impunity, Therefore, the provisions in Section 115 with adequate safeguards and checks. The legislature in its wisdom has provided that mere mistake, or error or violation or abuse is not enough. The delinquency has to be graver. That is why it made "wilful" delinquency culpable. What is then understood by the word "wilful" or "wilfully".

9. Words and Phrases. Vol. 45, gives the meaning as follows : --

Wilful -- Intentional; not accidental or involuntary -- done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly; thoughtlessly, heedlessly or inadvertently ; --in common parlance word "wilful" is used in sense of intentional, as distinguished from accidental or involuntary, and "wilfully" refers to act consciously and deliberately done and signifies course of conduct marked by exercise of volition rather than which is accidental, negligent or involuntary.

Black's Law Dictionary defines the word thus :

"Wilfulness" implies an act done intentionally and designedly; a conscious failure to observe care; Conscious, knowing: done with stubborn purpose, but not with malice.

Webster's Third New International Dictionary gives the following meaning :

"governed by will without yielding to reason or without regard to reason; obstinately or perversely self-willed".

Therefore, the consensus of the meaning of the word "wilful" is intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom (see in this connection S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others,

10. It, therefore, follows from an analysis of the provisions contained in Sub-section (1) of Section 115 that the three essentials as indicated in Tarini Tripathy's case must not only be present, but the Collector should also be satisfied that the alleged delinquency is "wilful", that is to say, the infraction by way of acts or omissions was wilful and not accidental, or negligent or involuntary but intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom. This valuable safeguard was built into the provision by way of a check on the powers of the executive to dethrone an elected representative of the people from the august office. A Sarpanch may have failed to carry out the provisions of the Act, or the rules, may have violated them, certain of his acts may appear to be abuse of the powers, certain acts may appear to be detrimental to the Grama, but if such act, omission or exercise of power is not wilful, that is to say, deliberate, calculated, intentional and conscious, the Sarpanch does not lose his throne on which he is seated by the people.

11. In vain do we search for in Annexure 1, the impugned order, the record of satisfaction of the Collector that the Sarpanch "wilfully" acted or omitted to act wilfully. The order narrates his various acts and omissions but does not characterise them as wilful. Nor did the opposite parties indicate to us by producing the records that the Collector had, in fact, characterised the actions/ omissions of the Sarpanch as wilful but the word "wilful" was inadvertently omitted from the impugned order as per Annexure-1. The order, therefore, falls short of the mandatory requirement of Section 115(1) and is, therefore, on this ground alone ultra vires and invalid.

We go a bit deeper. We have extracted the grounds for suspension. Few of them do not even stand a cursory scrutiny. One of the grounds is that the petitioner cancelled the lease of Gadhua Pokhari at village Karadapal by adopting a resolution disobeying the orders of the Sub-divisional Officer, Anandapur. The resolution is not an order of the Sarpanch nor does the Sarpanch pass a resolution. A resolution is passed by the Grama Panchayat -- its members. The

Sarpanch is but one of such members having one vote, if a resolution was passed contrary to the decision of the sub-divisional Officer, that was the resolution of the Grama Panchayat, not a resolution of the Sarpanch. It is too elementary. He was functioning in accordance with the democratic principles. If the members carried a resolution, how could he be found fault with.

Then another ground : He advanced a sum of Rs. 1,000/- to the Secretary of the Grama Panchayat in the absence of any provision enabling him so to do. But there was no prohibition prohibiting such grant. However, if he did grant, that might be improper and he should be advised not to repeat in future. But that would not amount to delinquency wilfully committed.

Another ground still is that he failed to call upon the Secretary to furnish security as required by Section 254 (sic) of the Grama Panchayat Rules, 1968. Again this may be an infraction of the rules; but was it wilful, that is to say, calculated, designed, intentional and conscious etc. May be, the Secretary or the Sarpanch was not aware of the provisions or he was negligent. The omission may be involuntary. A mere omission is not per se wilful omission.

The last ground : The Sarpanch retained cash in excess of the prescribed limit. Here is an indisputable infraction. But was it wilful ? Though it has been vehemently argued that there is no department of Government where cash is not retained or occasionally retained in excess of the financial limit, we are of the view that when there is infraction, the person should be pulled up. Was it negligent or wilful and the other question of graver importance is : was Section 115(1) enacted conferring power on the executive to suspend an elected Sarpanch from office merely because on some days he retained in hand cash in excess of the prescribed limit. Would this ground alone be sufficient for throwing the Sarpanch overboard. Our answer is in the negative unless the Sarpanch is incorrigibly defiant.

12. With the aforesaid observations and guidelines for future compliance, we quash Annexure-1 and allow the writ application. No costs.

S.C. Mohapatra, J.

13. I agree.