

**(1971) 07 GAU CK 0004**  
**In the Gauhati High Court**  
**Case No : Civil Rule No. 365 of 1970**

Banikanta Sharma

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

**Date of Decision :** 27-07-1971

**Acts Referred:**

Assam Panchayat (Amendment) Act, 1959 — Section 13, 138(1), 14(11), 27(2), 27(3)  
Constitution of India, 1950 — Article 226

**Citation :** AIR 1972 Guw 19

**Hon'ble Judges :** P.K. Goswami, C.J.; M.C. Pathak, J

**Bench :** Division Bench

**Advocate :** K. Lahiri and D.N. Choudhury, for the Appellant; K. Sharma, for the Respondent

## Judgement

P.K. Goswami, C.J.—This application under Article 226 of the Constitution is directed against an order of the Government of 18th April 1970 suspending the Petitioner who was the President of Baranaddi Gaon Panchayat at the material time, pending his removal from the office.

2. The Petitioner was elected President on 15th of July 1968. When he took over charge one Prafulla Chandra Sharma was the Secretary of the Gaon Panchayat who was appointed temporarily by the Gaon Panchayat on 6th March 1966 and permanently on 23rd August 1967, in place of Ghanashyam Sharma who had taken leave with effect from 22nd November 1965 for more than a year on account of his suffering from tuberculosis. It appears from the records that Ghanashyam also was appointed by the Gaon Panchayat on a temporary basis on 8th March 1960 (Annexure "I" to the application). It is said that Ghanashyam was cured and he desired to rejoin his post, but was not allowed by the Panchayat to do so. As a matter of fact, an order was passed by the Executive Magistrate, Nalbari on 11th April 1967 asking the President to allow Ghanashyam to join his post. The Sub-divisional Officer, Nalbari also in his letter to the President dated 5th May 1968 directed the President to "discharge the newly

appointed Secretary Shri Prafulla Sharma and allow the former Secretary to join in his original post" (Vide Annexures "E" and "F" to the counter-affidavit). The President, who was at that time one Rameswar Sharma, on receipt of this Sub-divisional Officer's letter submitted his resignation by his letter dated 3rd June 1968 (Annexure "F"). As a matter of fact, Rameswar Sharma had already written on 23rd of May 1968 requesting the Sub-divisional Officer to accept his resignation and to relieve him of the responsibilities (Annexure "G"). It appears that the resignation was accepted, which led ultimately to the election of the Petitioner as President on 15th July 1968, as already noticed. It is in this background that the Petitioner received the letter dated 27th August, 1968 (Annexure "H"), by which he was asked by the Sub-divisional Officer "to allow Shri Ghanashyam Sharma to join his duty within 8 days from the date of receipt of this letter. Otherwise you are hereby asked to show cause within 7 days why action will not be taken according to the provision of the Assam Panchayat Act." The Petitioner wrote to Ghanashyam Sharma on 27th July 1968 (Annexure "I") with copy to the Sub-divisional Officer informing him that "the Gaon Panchayat has no authority to appoint the G.P. Secretary u/s 13 of Assam Panchayat Act, 1959 as amended in 1964. In obedience to the A.P. Act, you could not be reappointed". The matter was also discussed in the meeting of the Gaon Panchayat held on 29th October, 1968 and the second resolution on the subject may be quoted in extenso: (Annexure "J").

Today's meeting opined that the Govt. letter in connection with discharge and appointment of G.P. Secretary was discussed in the proceeding (sic) meeting and the President was authorised verbally to communicate with Govt. in this respect. Now it is learnt that grants to Gaon Panchayat have been stopped for the Secretary affairs. The former Gaon Panchayat legally appointed Shri Prafulla Sharma as Secretary and he is serving continuously and smoothly since 2 years 6 months back and the Gaon Panchayat has granted him increments and the same has been incorporated in annual budget. Today's meeting regret at the direction of the Govt. to discharge the Secretary who is serving for the last 2 years 6 months.

This meeting request the State Government to confirm the appointment of Shri Prafulla Sharma as Secretary of the Gaon Panchayat. Today's meeting authorise the President to make all correspondence in this respect.

Amongst the members present Shri Khagen Deka and Shri Prasanna Kumar Deka opposed the resolution. By the decision of the majority it was passed." The Sub-divisional Officer reacted to this resolution by his letter dated 8th November 1968. (Annexure K) to the President, the relevant portion of which may be quoted:

With reference to the Resolution No. 2 you are hereby informed that the G.P. has no power to appoint the G.P. Secretary as per provision of the Amended Act. Hence the 2nd resolution of the G.P. meeting held on 29-10-68 has been hereby declared illegal according to the Section 138(1) of the A.P. Act, as the resolution

has been taken in contravention of the Act.

Then again, on 21st December 1968, the Gaon Panchayat passed another resolution (Annexure L), which may also be quoted in extension:

To-day's meeting, after discussing all aspects of income and progress of the G.P. finds that the total annual income of the G.P. does not exceed Rs. 1400.00 from the share of land revenue, local rate and sale proceed of pounds. On the other hand, as per direction of the Govt. from the 1st July of 1967, the Panchayat are to pay Rs. 100.00 per month as pay of the Secretary. Under the circumstances, the Panchayat works have been greatly hampered. Therefore, the meeting of the G.P. today unanimously resolved keeping in mind the financial condition of the G.P., that the Panchayat be run without the Secretary. The President will himself conduct the business of the G.P. under such conditions. The President is empowered to conduct the function of the G.P. by paying allowance according to need. The President is hereby asked to send copy of this resolution to the S.D.O. Nalbari for necessary action and approved (sic).

The Sub-divisional Officer replied to this resolution by his letter dated 4th February 1969 to the President (Annexure M) as follows:

This action of the G.P. cannot be considered as the proper reply of this office letter dated 08.11.68. As this is merely a resolution of the G.P. the resolution of the Panchayat may be approved provided you act according to our letter mentioned above.

This letter therefore refers back to Annexure "K" whereby it was pointed out by the Sub-divisional officer that the Gaon Panchayat had no power to appoint the Secretary.

3. The above is the background in which the Petitioner was asked by the Government on 22nd March 1969 (Annexure VII) to show cause why "you should not be removed from the office of the President under Sub Section (3) of Section 27 of the Assam Panchayat Act, 1959 (Assam Act XXIV of 1959) for wilful negligence in the discharge of your duties on the following charges:

1. You appointed one Shri Prafulla Sharma as Secretary of the Barnadi Gaon Panchayat in violation of Section 13 of the Assam Panchayat Act. 1959 while the existing Secretary of the said Gaon Panchayat was on leave.

2. You did not obey the orders of the Sub Divisional Officer Nalbari issued in this connection under his letter No. (1) DKNPI-1/67/91-94 dated 11-04-67

(2) DKNP. 1-12/68/2534 dated 15.05.68

(3) DKNP. 1-12/68/2748 dated 28.05.68 and

(4) DKNP. 1-12/68/4637 dated 27.08.68.

Thus you have made yourself liable to the charges of wilful neglect in the discharge of your duties within the meaning of Section 27(2)(ii) of the Assam

Panchayat Act, 1959.

The Sub-divisional Planning Officer, Nalbari was asked to receive the Petitioner's explanation and to hold an enquiry. The Petitioner in his explanation to the charge dated 19th April 1969 (Annexure VIII) pointed out that he never wilfully neglected in discharging his duties as President of the Barnaddi Gaon Panchayat and that Prafulla Sharma was not appointed as Secretary during his presidentship and was appointed three years earlier during the presidentship of Rameswar Sharma. It was then explained that the charge of violation of Section 13 was not tenable against him. The Petitioner also pointed out there that the first three letters referred to in charge No. 2 were prior to his assumption of office as President. With regard to the fourth letter which was received by him, he placed the same before the meeting of the Gaon Panchayat and the Gaon Panchayat passed several resolutions on the subject, to which attention was drawn. The Petitioner therefore represented that he was not liable for any of the charges.

4. The enquiry officer communicated his findings to the Government on 23rd May 1969, (Annexure N) with the following conclusion:

In conclusion it is a fact that the present President has also refused to allow the lawful Secretary Shri Ghanshyam Sharma to resume his duty after his leave and allowed Shri Prafulla Sharma to act as Secretary though there does not occur a vacancy. Hence the President Shri Banikanta Sharma has violated Section 13 of the A.P. Act and he is guilty of misconduct and wilful negligence in the discharge of his duties.

I therefore suggest that Shri Banikanta Sharma President Barnaddi G.P. may be disqualified u/s 27(2)(i)(ii)(iii) of the A.P. Act, 1959 as amended up to 24th December 1964.

The Government also on 25th September, 1969 (Annexure O) instructed the Petitioner "to relieve Sri Prafulla Sharma from duties immediately and allow Shri Ghanashyam Sharma the original incumbent to re-join his duties as Gaon Panchayat Secretary with immediate effect." Ultimately since the President backed by the resolutions of the Gaon Panchayat did not comply with the direction of the State Government, the impugned order dated 18th April 1970 was passed.

5. From the above recitals of the events, the whole episode discloses a showdown between the Sub-divisional Officer on the one hand and the Gaon Panchayat on the other. We are unable to find from the records whether Ghanashyam was at any stage permanently appointed by the appropriate authority. He is only shown as a temporary employee whereas Prafulla Sharma was appointed permanently by the Gaon Panchayat. At the material time of his permanent appointment, the State Government was the competent authority to appoint the Secretary. It is however, pointed out that since the appointment was by a resolution of the Panchayat which was forwarded to the authorities and the

appointment was not disapproved and even budgetary provision was made for the appointment, although initially the appointment was made by the resolution of the Gaon Panchayat it can be considered as being ratified by the appropriate authority. We are not required to consider these aspects in this application with regard to the mutual rights of the two appointees.

6. The only questions which are canvassed before us in this proceeding are with regard to the charge which has been framed and the suspension order pending removal. We will take the suspension order first for consideration. The Petitioner was suspended pending his removal under the second proviso to Sub-section (3) of Section 27. It is submitted by the learned Counsel appearing on behalf of the Respondents that the charge is also u/s 27(2)(ii) for wilful neglect in the discharge of his duties. We may read the provision under which the order of suspension has been made:

27. (3) A President ... who immediately ceases to hold office according to the provisions of Sub-section (1)(a) and (c) or is disqualified by the State Government according to the provisions of Sub-section (2) shall be removed in the manner prescribed:

Provided that no such person as aforesaid shall be removed until he has been given a reasonable opportunity of showing cause against the action proposed to be taken against him.

Provided further that notwithstanding anything contained in this sub-section, the State Government may at any time, suspend a President ... pending his removal under this Sub-section if his continuance in office is considered inadvisable by the State Government on any of the grounds for which he may be disqualified under Sub-section (2) of this section or on the ground of public interest.

It is contended by Mr. Lahiri on behalf of the Petitioner that the order of suspension is beyond the scope of the proviso. He submits that unless the Government had disqualified him earlier, it had no power to suspend under the proviso. He further submits that the words "pending his removal" clearly show that the question of suspension could be taken up only in a removal proceeding after the Petitioner had been disqualified by the Government u/s 27(2). It is admitted by the Respondents that the Petitioner had not been disqualified by the Government u/s 27(2). It is, however, submitted that the charge is a composite charge covering both the question of disqualification as well as removal of the Petitioner for the offence he has committed, namely, wilful neglect in the discharge of his duties. A perusal of the proviso clearly brings to light the power of the State Government to suspend a President pending his removal under Sub-section (3) if his continuance in office is considered by the Government to be inadvisable on any of the grounds on which he may be disqualified under Sub-section (2) of Section 27 or on the ground of public interest. It is, therefore, clear that once the Government is of opinion that the continuance of the President in office is inadvisable on the grounds for which he may be disqualified

and, in this case, for the offence of wilful neglect in the discharge of his duties (Section 27(2)(ii)), it is not necessary that before the order of suspension is passed, there should exist an earlier order of disqualification of the President. At that stage, all that is necessary on which the Government has to arrive at its satisfaction for the purpose of suspending pending removal is that there are grounds on which action could be taken for disqualification. This power reserved to the Government is undoubtedly an extraordinary power and the only limitation is that Governments' satisfaction is to be based on the grounds mentioned in the second proviso. If, however, Government does decide to suspend a President pending removal and the grounds in Sub-section (2) exist, the exercise of power by the Government under the second proviso is not open to question. The submission of Mr. Lahiri therefore cannot be accepted.

7. This however will not solve the entire problem. It is next to be considered whether there was any jurisdiction of the Government to frame a charge on 22nd March 1969 against the President on the two counts set out above. The first charge cannot at all be levelled against the Petitioner who had no occasion to appoint Sri Prafulla Sharma. If at all, the charge can be laid against the Panchayat, who by successive resolutions appointed him. With regard to the second charge, three letters clearly were not addressed to the Petitioner and the only letter which he could at all be said to have disobeyed is the one dated 27th August 1968. Even this letter he was duty bound to place before the Panchayat and u/s 14(11) he has to carry out the resolutions of that body. While therefore he placed the letter dated 27th August 1968 before the Panchayat and communicated the resolution of the Panchayat, as he did, stating the circumstances under which the order could not be complied with, he was only carrying out the duties enjoined upon him by the Act to mention one such u/s 14(11). The second charge therefore, against the Petitioner is on the face of it absolutely untenable under the law. No charge can be levelled against the Petitioner by the Government when he was only carrying out the statutory duties imposed upon him under the Act. The impugned charge is therefore invalid and is hereby quashed. Since the suspension order was in pursuance of this charge, the order of suspension shall also cease to be in force and that order vacates itself.

8. In the result, the application is allowed. The impugned orders are quashed. The Rule is made absolute. The Petitioner will be entitled to costs. Counsel's Fee: Rs. 100/-.

M.C. Pathak, J.

9. I agree.