
(2008) 09 OHC CK 0061

In the Orissa High Court

Basudev Dandasena

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 04-09-2008

Acts Referred:

Orissa Grama Panchayat Act, 1964 — Section 115(2)

Citation : (2009) 1 CLR 278 : (2010) 1 OLR 909

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

Bench : Single Bench

Judgement

M.M. Das, J.—Misc. Case No. 9639 of 2008 has been filed by one Jogeswar Meher seeking intervention in the writ petition.

2. It has been averred in the Misc. Case petition that the intervenor has preferred this Misc. Case to assist the Court for just and proper decision of the case as well as to bring the facts, which are otherwise not brought by the writ petitioner on record.

3. As I find that the intervenor-applicant has no direct interest in the lis, though I am not inclined to allow such intervention, nevertheless, Mr. H.S. Mishra, learned Counsel appearing for the intervenor is permitted to make his submission on the merit of the case, while hearing the writ petition.

4. It appears from the facts, as stated in the writ petition and the intervention application, that the writ petitioner was elected as the Sarpanch of Chandanvati Grama Panchayat under Bolangir block in the district of Bolangir. He has assailed the order passed by the Government u/s 115(2) of the Orissa Grama Panchayat Act, 1964 (hereinafter referred to as "the Act") passed on 18.6,2008 placing him under suspension from the office of Sarpanch with immediate effect. The petitioner has averred that the said order of suspension ex facie shows non-application of mind on the part of the Government as no reason has been assigned in the said order in support of such suspension except quoting the language of Section 115 (2) of the Act. It has been further stated that the said

order of suspension was received by the petitioner on 27.6.2008 along with the draft charges framed against him as hereunder:

1. That Sri Basudev Dandasena, Sarpanch, Chartdanvati G.P. while indulging some alleged immoral activities, was arrested and remanded to jail custody as the bail was rejected by the Court on 24.3.2008.

2. Thus, it is construed that the said Sri Dandasena being a people's representative has no least hesitation to abuse his powers" by committing such activities in under mining his official status.

3. That the said Sri Dandasena being the head of a constitutional body has acted in a manner which is prejudicial to the interest of people of the said G.P.

5. Learned Counsel for the-petitioner strenuously urges that the action of the Government is not only mala fide but also arbitrary and whimsical and has not been passed in conformity with the law inasmuch as principles of natural justice has been violated as the petitioner was not afforded with an opportunity of hearing before passing the said order. Learned Counsel further contends that the petitioner, being the representative of the Grama elected to the office of Sarpanch, should not be thrown out of the said office on the basis of vague allegation and an unreasoned order.

6. Mr. H.S. Mishra, learned Counsel appearing for the intervenor submits that the petitioner by his conduct has proved that he is not worthy to occupy the office of Sarpanch any further as while continuing as Sarpanch, he was arrested being caught raid handed by the police officer of the Town Police Station, Bolangir along with two ladies and has been booked under Sections 4, 5, 6,7 and 8 of the Immoral Traffic Prevention Act in Town P.S. Case No. 74 dated 24.3.2008 corresponding to G.R. Case No. 166 of 2008 pending before the learned S.D.J.M., Bolangir. After being arrested, the petitioner was remanded to the jail custody for about 15 days till he was granted bail. The Collector, Bolangir -- Opp. Party No. 2 after coming to know about the involvement of the petitioner in the criminal case and his arrest, by his letter dated 7.4.2008 moved the State Government - Opp. Party No. 1 recommending suspension of the writ petitioner enclosing the F.I.R. and the order sheet in the said G.R. Case. It was only after receiving such recommendation from the Opp. Party No. 2, the Government on due application of mind to. the facts and circumstances of the case and keeping in view the provisions of Sub-section (2) of Section 115 of the Act finding that continuance of the petitioner as Sarpanch will be detrimental to the interest of the inhabitants of the Grama, has passed the order of suspension. Upon being suspended, the intervenor was requested to take over complete charge of the Grama Panchayat. The Branch Managers of UGB, Chandanvati and ADB, Bolangir were directed not to allow the petitioner to withdraw any cash from the Grama Panchayat account without prior permission. The petitioner was not in possession of any paper or document of the Grama Panchayat as the intervenor has taken charge of the said Grama Panchayat and is officiating as the Sarpanch.

7. During the pendency of the writ petition, pursuant to the interim order passed on 2.7.2008 directing that in the interim, in the event the petitioner has not handed over charge of Sarpanch as on that date, he shall not be required to hand over charge till the next date, the said order has been produced by the petitioner before the opp. parties and the opp. Parties are being pressurized to allow him to function as Sarpanch of the Grama Panchayat.

The order of suspension has been annexed as Annexure-1 to the writ petition, which reads as follows:

Government of Orissa Panchayati Raj Department

ORDER

No. PRI-I(i)70/08- 25318/PR dated, BBSR, the 18.6.08

Whereas from the allegations, as appended here to as in Annexure, it appears to the State Government that Sri Basudev Dandasena, Sarpanch, Chandanvati G.P. under Bolangir Block of Bolangir District has wilfully violated the provisions of the "Orissa Grama Panchayats Act, 1964 (Orissa Act 1 of 1965)" and the rules made there under and abused his powers vested under the said Act:

2. And whereas from the allegations, the State Government are satisfied that further continuance of the said Sri Basudev Dandasena in the Office of the Sarpanch will be detrimental to the interest of the inhabitants of the said Chandanvati Gram Panchayat.

3. Now, therefore, in exercise of the powers conferred by Sub-section (2) of the Section 115 of the said Act, the State Government, have been pleased to order that the said Sri Dandasena, be and is hereby placed under suspension from the office of the Sarpanch of the said Chandanvati G.P. with immediate effect.

4. Further, in pursuance of Sub-section (1) of the said section, the said Sri Basudev Dandasena is hereby called upon to show cause within thirty days from the date of receipt of this order as to why action as would be deemed proper should not be taken up against him in accordance with law. If no explanation is received within the period as specified above, it will be presumed that the said Sri Dandasena has no explanation to offer and the matter will be decided ex parte.

He may also state whether he desires to be heard in person.

By order of the Governor. Sd/- Illegible, 13.6.2008 Addl. Secretary to Government

It is, therefore, the admitted case of the parties that the petitioner was elected as the Sarpanch of the Chandanvati Grama Panchayat. On an F.I.R. being lodged, Bolangir Town P.S. Case No. 74 of 2008 was registered. During the course of investigation, the petitioner was arrested from the spot on the allegation of commission of offences under sections 4, 5, 6, 7 and 8 of the Immoral Traffic

Prevention Act, 1956. The petitioner was arrested in connection with the said case and subsequently has been released on bail.

8. The question now falls for consideration is as to whether on the ground of allegation of involvement of the petitioner in commission of the aforesaid offences and on the ground that he was arrested in connection with the said case, the petitioner can be suspended by the Government in exercise of its powers u/s 115 (2) of the Act. Section 115 of the Act prescribes that if the State Government, on the basis of a report of the Collector or the Project Director, District Rural Development Agency, or suo motu or of the opinion that circumstances exist to show that the Sarpanch or the 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 the office would be detrimental to the interest of the Grama Panchayat or the inhabitants of the Grama, they may after giving the person concerned a reasonable opportunity of showing cause, remove him from the office of Sarpanch or Naib-Sarpanch, as the case may be. Sub-section (2) thereof prescribes that the State Government may pending initiation of the proceeding on the basis of their opinion under Subsection (1) by order, for reasons to be recorded in writing, suspend the Sarpanch or Naib-Sarpanch, as the case may be, from the office. Sub-section (3) thereof provides that the State Government, at any time during the pendency of proceeding under Sub-section (1), may revoke the order of suspension of a Sarpanch or Naib-Sarpanch passed under Sub-section (2).

9. Admittedly, a charge sheet has been served on the writ petitioner initiating a proceeding under Sub-section (1) of Section 115 of the Act. In view of initiation of such proceeding, the Government has issued the order putting the petitioner under suspension by exercise of power under Sub-section (2) of Section 115 of the Act.

10. On perusal of the order of suspension under Annexure 1, it appears to this Court that the said order has been written in the nature of a format quoting the grounds as stated in Sub-section (1) of Section 115 of the Act under which, a Sarpanch can be removed from his office after completion of a proceeding under the said Sub-section (1).

11. Even though an order of suspension under Sub-section (2) of Section. 115 of the Act is required to be passed by mentioning the reasons in writing in the said order, it appears that no reason whatsoever has been assigned in the order of suspension passed by the Government under Annexure-1. The ingredients upon which a Sarpanch can be removed from his office as provided under Sub-section (1) of Section 115, even if quoted in the order of suspension, cannot be construed to be the reasons recorded in writing for suspending the Sarpanch as per the mandate of Sub-section (2) of Section 115 of the Act.

12. In this view of the matter, the order of suspension under Annexure-1 cannot be sustained and the same is accordingly quashed. The matter is remitted back to the Government in its Panchayati Raj Department to reconsider the question of suspending the petitioner from his office and if the Government is satisfied that the petitioner could be kept under suspension, a fresh order in accordance with the provisions of law referred to above assigning the reasons in support of such suspension may be passed. However, if the Government feels that this is not a fit case where the petitioner should be kept under suspension even though a proceeding has been initiated against him under Sub-section (1) of Section 115 of the Act, the petitioner shall be directed to resume his office as Sarpanch of the Grama Panchayat.

13. The writ petition and the Misc. Case are accordingly disposed of. Consequently, all pending Misc. Cases stand disposed of.