
(1966) 08 OHC CK 0002
In the Orissa High Court
Case No : O.J.C. No. 125 of 1964

Benudhar Misra

APPELLANT

Vs

The State of Orissa and Another

RESPONDENT

Date of Decision : 05-08-1966

Acts Referred:

Orissa Grama Panchayat Rules, 1949 — Rule 139, 144, 35, 36

Citation : (1966) 32 CLT 1162

Hon'ble Judges : Ahmad, C.J.; Misra, J

Bench : Division Bench

Advocate : Asok Das, L. Rath and B.B. Rath, for the Appellant; A.G., for the Respondent

Final Decision : Allowed

Judgement

Misra, J.—The Petitioner was the Sarpanch of Ufula Grama Panchayat in the district of Bolangir. On 31-8-1963, the State of Orissa (opp. party-I) served a notice calling upon him to show cause as to why he would not be removed from the Sarpanchship. The notice contained the following five charges:

- (1) You were keeping cash in hand in excess of the limit fixed by the District Magistrate and have contravened Rule 139 of the Orissa Grama Panchayat Rules, for instance, you had cash in hand amounting to Rs. 2,567.47 nP. on 7-12-1962.
- (2) You have given second advance for execution of development works without adjusting the earlier advances and have contravened Rule 144 of the Orissa Grama Panchayat Rules.
- (3). You have disregarded the resolution of the Grama Panchayat and have advanced Rs. 400/ - for construction of M.E. School at Kamalpur.
- (4). You have not taken steps for execution of development works entrusted to the Grama Panchayat.
- (5). You have not taken steps for realisation of the arrear dues of the Grama

Panchayat amounting to Rs. 3000.29 nP. in spite of directions from the Collector. "

On 7-10-1963 the Petitioner showed cause by submitting an explanation. On 2-6-1964, opposite party No. 1 removed the Petitioner from the office of Sarpanch by Notification No. 15116 G.P. XXV-129/63 dated 2-6-1964.

The relevant portions of the Notification are extracted hereunder

"GOVERNMENT OF ORISSA, COMMUNITY DEVELOPMENT AND PANCHAYAT RAJ (GRAMA PANCHAYAT) DEPARTMENT". NOTIFICATION

Dated, Bhubaneswar, the 2nd June 1964. No. 15116/ G.P. XXV-129/63.

Whereas Sri Benudhara, Sarpanch of Ufula Grama Panchayat in the district of Bolangir had in the opinion of the State Government wilfully omitted, refused to carry out and disobeyed several provisions of the Orissa Grama Panchayat Act, 1948, and the Orissa Grama Panchayat rules, 1949 and lawful orders issued thereunder and abused the powers vested in him as will appear from the following instances:

(1). He was keeping cash in hand in excess of the limit fixed by the District Magistrate and has contravened Rule 139 of the Orissa Grama Panchayat Rules for instance he had cash in hand amounting to Rs. 2,567.48 nP. on 7-12-1962.

(2) He has given Second advance for execution of development works without adjusting the earlier advances and has contravened Rule 144 of the Orissa Panchayat Rules.

(3) He has disregarded the resolution of the Grama Panchayat and has advanced Rs. 400/- for construction of M.E. School at Kamalpur.

(4) He has not taken steps for execution of development works entrusted to the Grama Panchayat.

(5) He has not taken steps for realisation of the arrear dues of the Grama Panchayat amounting to Rs. 3,410.29 nP. in spite of directions from the Collector.

Now, therefore; in exercise "of the powers conferred by Clause (b) of Rule 35 of the Orissa Grama Panchayat Rules, 1949, the State Government do hereby remove the said Shri Benudhar Misra from the office of the Sarpanch of Ufula Grama Panchayat.

By order of the Governor, Sd. S. Appa Rao under-Secretary to Government." An analysis of the notification reveals that it merely enumerates the very charges mentioned in the notice. It does not contain a statement of reasons for the action taken by the State. The Petitioner accordingly challenges the validity of this notification as being in clear contravention of Rule 36 of the Orissa Grama Panchayat Rules, 1949, hereinafter referred to as the Rules.

A counter-affidavit was filed on behalf of opposite party No. 1. The additional facts unfurled therein are that on receipt of the explanation from the Petitioner,

the State Government sent the charges and the explanation to the Collector of Bolangir, for comments on each of the charges. The Collector submitted his comments. A copy the comments has been filed as an annexure to the counter. The counter also contains an assertion that the explanation of the Petitioner was duly considered by the State Government before the removal order was passed.

2. Mr. Das contends that the order of removal is illegal and void being in contravention of Rule 36 and must be vacated, and that the illegality cannot be cured by adducing extrinsic evidence that in fact the State Government applied their mind to the charges and explanation and issued the notification thereafter. To appreciate this contention, the relevant rules may be examined.

3. Rule 35(b) lays down that the State Government may, by notification, remove any Sarpanch or Naib Sarpanch - if he, in their opinion, wilfully omits or refuses to carry out or disobeys the provisions of the Act or any rules, bye-laws, regulations of lawful orders issued there order or abuses the powers vested in him. Rule 36 prescribes that "when the State Government propose to take action under Sub-rule (b) of Rule 35 they shall give an opportunity to the Sarpanch or Naib-Sarpanch concerned for explanation and the notification issued under- the said rule shall contain a statement of reasons for the action taken.

Both the rules read together clearly indicate that before a Sarpanch is removed by a notification issued under Rule 35(b), he must be given an opportunity for an explanation in respect of acts of omission and commission referred to in Rule 35(b). Rule 36 makes it obligatory that the notification issued under Rule 35(b) shall contain a statement of reasons for the action taken.

There is no dispute that under Rule 36 the Petitioner was supplied with the charges of acts of omissions and commissions under Rule 35(b) and he was given opportunity for offering explanation. The only question in controversy is whether the notification contains a statement of reasons for the action taken and, if it does not, whether it is contrary to law and liable to be quashed.

4. The notification is in two paragraphs. Its first paragraph merely enumerates the very charges framed against the Petitioner which were embodied in the notice to show cause. The operative Second paragraph merely refers to the factum of removal of the Petitioner by the State Government in exercise of their powers under Rule 35(b). The notification, therefore, contains no statement of reasons for the action taken by the State Government.

5. The next question for consideration" is whether the omission on the part of the state Government to give a statement of reasons for the action taken in the notification can be cured by adducing extrinsic evidence that in fact the State Government applied their mind fully to the case and the omission is a mere irregularity. Such an argument is not tenable. The statutory rule expresses itself in untakable terms that the notification must embodies a statement of reasons for the action taken. The notification .has been statutorily required ex facie contain the statement of reasons. Mere production of the comments of the

Collector would not necessarily show that the state Government had applied their mind to the materials of the case before passing the order of removal. The legislature has made a mandatory provision that the statement of reasons in the notification would constitute the sole evidence that the concerned authority had applied its mind to the facts of the case. It is to be remembered that the office of the Sarpanch is an elective institution. Removal of a person, who has fined up an office after election, on grounds of conduct is a serious matter. It is why, though the Sarpanch is removable under various other provisions of Rule 35, an opportunity for showing cause is given to him only in respect of removal under Rule 35(b) and not under the other provisions. The charges and the action of removal do not constitute the reasons for the action taken. Statement of reasons is different from the bald decision of removal. The statement of reasons must therefor be indicated in the notification itself and its omission cannot be supplemented by extraneous evidence.

6. The learned Standing Counsel contended that the decision of the State Government removing the Sarpanch by notification is an administrative act and cannot be interfered with by a writ of certiorari. This argument ignores the position that even in respect of some administrative acts, the administrative authority has a duty to act judicially in arriving at a decision. Where an administrative body is to consider a question purely from the point of view of policy and expediency, it is not to decide that matter judicially. On the other hand, if that body has to examine the proposals and objections and then arrive at a decision, it is to act judicially in the course of the inquiry. This distinction was fully brought out in *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, . Their Lordships stated the law thus -

The provisions of a statute may enjoin on an administrative authority to act administratively or judicially. If the statute expressly imposes a duty on the administrative body to act judicially, it is a clear case of judicial act. But the "duty to act judicially may not be expressly conferred but may be inferred from the provisions of the statute. It may be gathered from the cumulative effect of the nature of the rights affected, the manner of the disposal provided the objective criterion to be adopted, the phraseology used the nature of the power conferred, of the duty imposed on the authority and other indicia afforded by the statute. In short, a duty to act judicially may arise in widely different circumstances and it is not possible or advisable to lay down a hard and fast rule or an inflexible rule of guidance.

7. On the aforesaid test the action taken by the State Government under Rules 35 and 36 constitutes a quasi-judicial act. The judicial nature of the act lies in the fact that the Sarpanch must be given an opportunity for an explanation of the charges levelled against him and the State Government shall give a statement of reasons for the act of removal after consideration of the charges and the explanation thus before the administrative authority there is a proposition and an opposition. The statement of reasons would indicate that the

mind had been applied to the respective cases of the parties and conclusion was reached thereafter. If in fact a statement of reasons is given, it is not liable to be questioned on the ground of inadequacy or insufficiency. That is a matter lying entirely within the jurisdiction of the administrative authority. But the absence of a statement of reasons in the notification would indicate that the authority having a jurisdiction did not exercise it, or, at any rate, exercised it illegally. The notification is liable to be quashed by a writ of certiorari. In this connection Syed Yakoob V.K.S.J. Radhakrishna and Ors. AIR 1964 S.C. 471, is instructive as indicating the nature of writ of certiorari and when it can be issued. The error of law is apparent on the face of, the notification.

8. In the result, the application is allowed with costs. Hearing fee of rupees two hundred. A writ of certiorari be issued quashing the notification. A writ of mandamus be issued directing the State Government to act in accordance with law and to refrain from acting contrary to law.

Ahmad, C.J.

9. I agree.