

(2005) 04 OHC CK 0031

In the Orissa High Court

Case No : Writ Petition (C) No's. 7285, 11688 and 11698 of 2004

Bhagabat Sahoo

APPELLANT

Vs

Collector and Others
 Dasaratha Murmu and Debaraj
Sahoo Vs State of Orissa and Others

RESPONDENT

Date of Decision : 27-04-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 40
Orissa Grama Panchayat Act, 1949 — Section 16(1), 18, 19(1)
Orissa Grama Panchayat Act, 1964 — Section 24
Orissa Grama Panchayat Rules, 1968 — Rule 35(c)

Citation : (2005) 100 CLT 17

Hon'ble Judges : Sujit Barman Roy, C.J;M.M. Das, J

Bench : Division Bench

Advocate : S.P. Mishra, S.K. Mishra, M. Das and Be. Mohapatra, in W.P.C No. 11698/04, Srinivas Mohanty, S. Routray, Be. D. Panda, D.K. Mohapatra and A. Dei, in W.P.C No. 11688/04 and Rakesh Sharma, S.R. Singh Samanta, P.R. Patnaik and P. Behura, in W.P. C No. 7285/04, for the Appellant; Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Das, J.—As a common question has been raised by the petitioner in all the above Writ Petitions, they were heard together and thus, are disposed of by this common judgment.

2. The petitioners in all these Writ Petitions call in question the Constitutional validity of Section 24 of the Orissa Grama Panchayat Act, 1964. Mr. S.P. Mishra, Learned Counsel appearing on behalf of the petitioner in W.P.(C) No. 11698 of 2004 contended that by the Orissa Grama Panchayat Act, 1964 (hereinafter referred to as "the New Act"), the previous Act, namely, the Orissa Grama Panchayat Act, 1949 (hereinafter referred to as "the Old Act") was repealed. Section 16(1) of the Old Act provided that every Grama Sabha shall elect in the prescribed manner from among its members an Executive Committee, which

shall be known as the Grama Panchayat. The said Grama Panchayat, subject to the provisions of Section 18 thereof, shall elect a Sarpanch and a Naib-Sarpanch from among its members. Section 18 of the said Act provided that notwithstanding anything contained in Section 19(1), the Sarpanch and the Naib-Sarpanch of the first Grama Sabha shall hold office for a term not exceeding three years and shall be eligible for re-election for one further term of three years. Mr. Mishra, further contended that Rule 35(c) framed under the Old Act provided for removal of Sarpanch if such removal is recommended by a resolution of the Grama Panchayat passed in a special meeting called for the purpose and supported by the votes of not less than two-thirds of the sanctioned strength of the Grama Panchayat. However, he submitted that under the new Act, the Sarpanch of a Grama Panchayat, unlike the Old Act, is directly elected by the electorates of the Grama Sasan who have been registered by virtue of the Representation of the People Act, 1950 as voters for any Assembly constituency relating to a Grama. He, therefore, contended that removal of a Sarpanch by vote of "no confidence" by the Ward Members as provided u/s 24 of the New Act is unconstitutional, discriminatory and contrary to the democratic principles. The further contention on behalf of the petitioner is that in view of several other provisions made under the New Act providing sufficient checks against the lapses on the part of the Members, Naib-Sarpanch and Sarpanch of a Grama Panchayat, enactment of Section 24 of the New Act providing removal of Sarpanch by a vote of "no confidence" by the Ward Members is contrary to the spirit of self-Government conceptualized under Article 40 of the Constitution of India and results in giving unfettered power to the Ward Members for unseating the Sarpanch who is elected directly by the inhabitants of the Grama, as their leader. Thus, the power of removal of Sarpanch who is directly elected by the people, at the instance of the Ward Members is against public interest and, is liable to be struck down as ultra vires the Constitution of India.

3. Mr. Shrinivas Mohanty, Learned Counsel for the petitioner in W.P.(C) No. 11698 of 2004 while adopting the arguments advanced by Mr. Mishra, further submitted that Section 24 of the New Act runs contrary to the legislative intention in enacting the Orissa Grama Panchayat Act, 1964, the sole purpose of which is to give administrative power to the inhabitants of Grama at the grass-root level for strengthening democratic system in the country and for self governance. He further submitted that a Sarpanch removed u/s 24 of the New Act by a vote of no-confidence, is discriminated from a Naib Sarpanch. According to Mr. Mohanty, since a Naib Sarpanch is elected from amongst the Ward Members, on his removal by a vote of no-confidence though he is removed from the office of Naib Sarpanch, yet he continues to be a Ward Member in the Grama Panchayat, whereas in the case of Sarpanch, if he is removed by a vote of no-confidence, he does not continue to be a member of the Grama Panchayat any further. Mr. Mohanty, therefore, contended that u/s 24 of the New Act, the Sarpanch is discriminated.

4. Reliance is placed by the petitioners on the decisions of the Supreme Court in

the case of The State of West Bengal Vs. Anwar Ali Sarkar, and State of Madras Vs. V.G. Row, .

5. The Learned Government Advocate on behalf of the State in reply to the contentions raised by the petitioners, submitted that a similar question was raised in the case of Mohan Lal Tripathi Vs. District Magistrate, Rae Bareilly and others, where the Supreme Court held a similar provision in U.P. Municipalities Act, to be intra vires. He further contended that Section 24 of the New Act is neither discriminatory nor contrary to public policy, it also does not violate the spirit of the Act and thus, there is no ground to declare the said provision ultra vires. He relied upon the decision in the case of Ram Beti Vs. District Panchayat Raj Adhikari and Others, in support of his contention that Section 24 of the New Section which is impugned in these Writ Petitions does not contravene Article 14 of the Constitution of India and, therefore, causes no discrimination in relation to the elected Sarpanch sought to be removed in a vote of "no confidence".

6. In order to appreciate the rival contentions raised before us, it would be apt to reproduce the relevant provisions of the Orissa Grama Panchayat Act, 1964 which is quoted herein below :

"Section 10. Constitution of Grama Panchayat :

(1) Every Grama Panchayat shall be composed of the following members, namely :

(a) a member to be elected by the persons referred to in Sub-section (1) of Section 4 from amongst themselves who shall be the Sarpanch."

*** ** "Section 24. Vote of no confidence against Sarpanch or Naib-Sarpanch : (1) Where at a meeting of the Grama Panchayat specially convened by the Sub-Divisional Officer in that behalf a resolution is passed, supported by a majority of not less than two-thirds of the total membership of the Grama Panchayat, regarding want of confidence in the Sarpanch or Naib-Sarpanch the resolution shall forthwith be forwarded by the Sub-Divisional Officer to the Collector, who shall immediately on receipt of the resolution publish the same on his notice board and with effect from the date of such publication the member holding the office of Sarpanch or the Naib-Sarpanch, as the case may be, shall be deemed to have vacated such office.

(2) In convening a meeting under Sub-section (1) and in the conduct of business at such meeting the procedure shall be in accordance with such rules, as may be prescribed, subject however to the following provisions, namely :

*** ** (j) if the resolution is passed at the meeting supported by the majority as specified in Sub-section (1) the Presiding Officer shall immediately forward the same in original along with the record of the proceedings to the Collector who shall forthwith publish the resolution in accordance with the provisions of Sub-section (1)."

*** *** *** 7. An Act or a provision of an Act can be struck down if the same has been enacted beyond legislative competency or if the provision of an Act violates fundamental rights guaranteed under the Constitution of India. The test of reasonableness wherever prescribes can be applied to different individual statutes impugned and no strait-jacket formula of general pattern of reasonableness can be laid down for all cases. Shri Patanjali Sastri, C.J. speaking for the Court in the case of the State of Madras (supra) held :

"... The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the Judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorizing the imposition of the restriction, considered them to be reasonable."

8. In the case of Mohan Lal Tripathy (supra), the Supreme Court relying upon the decisions in the cases of N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, and Jyoti Basu v. Debi Ghosal AIR SC 983 held that electing representatives to govern is neither a "fundamental right" nor a "common law right" but a "special right" created by the statutes, or a "political right" or "privilege" and not a "natural", "absolute" or "vested right". It further held that concepts familiar to common law and equity must remain stranger to Election Law unless statutorily recognized and a right to remove an elected representative, too must stem out of the statute as "in the absence of a constitutional restriction, it is within the power of a legislature to enact a law for the recall of the officers" and its existence or validity can be decided on the provision of the Act and not, as a matter of policy.

9. In the above case, the legality of the motion of "no confidence" was under consideration of the Supreme Court, as it is provided under the U.P. Municipalities Act. The facts giving rise to the said case are almost similar to the facts of the present case. As in the facts of the said case, the Supreme Court taking into consideration the provisions of the U.P. Municipalities Act as it stood previous to several amendments held that the legislative intention as gathered from history of the provision indicates that removal of President by vote of no confidence passed by the Board was always considered to be proper irrespective of whether the President was elected by the Board or the electors and came to the conclusion that removal by the Board is not only feasible but also in public interest.. It has further been held by the Supreme Court in the said decision, that

even though the manner of electing President has been changing from time to time, the method of his removal by a vote of no confidence by the Board has remained unchanged and the legislature never opted for removal of a President elected directly, by the electorate its, as that would have been a practical impossibility (emphasis supplied). Posed with a similar question as arises in the present case, the Supreme Court laid down that in modern political set up direct popular check by recall of elected representative has been universally acknowledged in any civilized system. Efficacy of such a device can hardly admit of any doubt. But how it should be initiated, what should be the procedure, who should exercise it within ambit of constitutionally permissible limits falls in the domain of legislative power. It, therefore, held that recall of an elected representative so long it is in accordance with law cannot be assailed on abstract notions of a democracy. The provision under the said Act for removal; of President of a Municipality by members of a Board was upheld by the Supreme Court as *intra vires*.

10. A similar question also arose in the case of *Ram Beti* (*supra*) in relation to validity of Section 14 of U.P. Panchayat Raj Act. In the said decision also, the impugned provision was declared upheld to be *intra vires* by holding that Section 14 so far as it empowers the members of the Grama Panchayat to remove the Pradhan of Grama Sabha by moving a motion of no confidence is not unconstitutional and void being violative of the concept of democracy or is not arbitrary and unreasonable so as to be hit by Article 14 of the said Act which is in *pari materia* to Section 24 of the Orissa Grama Panchayat Act, 1964. Considering the said provision, the Supreme Court has held the same to be *intra vires* and not discriminatory.

11. We, therefore, on considering the rival contentions raised by the parties have no hesitation in coming to the conclusion that there is absolutely no ground to strike down the provision of Section 24 of the Orissa Grama Panchayat Act, 1964 as either *ultra vires* the Constitution or unreasonable and discriminatory. The Writ Applications are therefore dismissed, but in the circumstances without costs. Interim orders passed earlier stand vacated.

Sujit Barman Roy, C.J.

12. I agree.