

(1977) 07 OHC CK 0005
In the Orissa High Court
Case No : O.J.C. No. 1019 of 1976

Biswanath Pradhan

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 27-07-1977

Acts Referred:

Arms Act, 1959 — Section 17(1), 17(3), 17(5), 18
Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 94
Orissa Grama Panchayat Act, 1964 — Section 109, 115(1), 115(2), 115(3)

Citation : (1977) 44 CLT 404

Hon'ble Judges : S.N. Shankar, C.J;B.K. Ray, J

Bench : Division Bench

Advocate : L. Rath, A.K. Misra, B.S. Misra and J.K. Rath, for the Appellant; G.B. Patnaik, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Sankar, C.J.—The sole point for determination in this writ petition under Articles 226 and 227 of the Constitution is whether a hearing is necessary before the Collector in exercise of his powers u/s 115(1) of the Orissa Grama Panchayat Act, 1964 (hereinafter called the Act) suspends a Sarpanch.

2. The Petitioner was elected as the Sarpanch of Sundarpur Grama Panchayat under the Chatrapur Panchayat Samiti on 13-5-1975. On the report of the Sub-Divisional Officer, Chatrapur, intimating that the Petitioner as Sarpanch had committed certain irregularities and violated the provisions of the Act and the Rules, the Collector by his order dated 31-8-1976 placed the Petitioner under suspension. The grievance of the Petitioner is that he was not allowed an opportunity of being heard before this order was passed and therefore the order is vitiated.

3. Relevant part of Section 115 of the Act reads as under:

115. Suspension and removal of Sarpanch, Naib-Sarpanch and member:

(1) If on the report of the Subdivisional 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 so 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.

(2) The State Government on the report of the Collector under Sub-section (1) shall, or if the State Government themselves are of the opinion that the circumstances specified in the said Sub-section exist in relation to the Sarpanch or Naib-Sarpanch then on their own motion, 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.

(3) In the case of a Sarpanch or Naib-Sarpanch, if he is not already under suspension in pursuance of an order under Sub-section (1) the State Government may, pending the disposal of the proceedings before them under Sub-section (2), suspend the Sarpanch or Naib-Sarpanch as the case may be.

x x x

This section occurs in Chapter XI of the Act headed as "Control". Section 109 in this Chapter provides that subject to the provisions of the Act, the rules made thereunder and any special or general orders issued by the State Government from time to time, the Collector or such other officer or person specially authorised in that behalf by the State Government "shall exercise general powers of inspection, supervision and control over the exercise of powers, discharge of duties and performance of functions by the Grama Panchayat under the provisions of this Act". The powers conferred on the collector under Sub-section (1) of Section 115 have to be read in the background of this general power of supervision and control which power to our mind necessarily includes within itself the power to regulate the working of the Grama Panchayat in accordance with the provisions of the Act. If in the case of a particular Grama Panchayat the Collector finds that there is a case of wilful omission or refusal or violation of the provisions of the Act or the Rules by the Sarpanch or Naib-Sarpanch of a Grama Panchayat, he can initiate disciplinary proceedings on the report of the Sub-Divisional Officer in the course of which by way of an interim measure he can suspend the Sarpanch or Naib-Sarpanch if he is of the opinion that the conditions mentioned in Sub-section (1) of Section 115 exist. But he cannot inflict any punishment or make any determination as to the alleged lapse on the part of the suspended Sarpanch or Naib-Sarpanch and is bound to report the matter to the

State Government under Sub-section (2) for further action. This in short is the scheme of Section 115 of the Act and the procedure prescribed for the removal of Sarpanch or Naib-Sarpanch.

4. It would be seen that in the process while Sub-section (1) of the section provides that the Collector would be competent to make an order of interim suspension on the basis of his "opinion" on the allegations of lapse or lapses with the materials before him, Sub-section (2) in terms enjoins an enquiry in to the alleged lapse or lapses by the State Government and at this stage the legislature has ordained that the person concerned shall have a reasonable opportunity of showing cause before any order to remove him from his office is passed. The Collector at the stage of suspension under Sub-section (1) therefore is not empowered or authorised by the Act to make any determination or pass any final order. Even the interim order of suspension that he is empowered to make can be passed only if he "is of the opinion" that circumstances mentioned in this Sub-section exist 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". The interim order envisaged in the Act is thus only a preventive measure to be taken in the larger interest of the Grama Panchayat and its inhabitants. The person suspended is then provided a right to be heard at the stage of enquiry.

5. Though as a result of the suspension the person concerned may not for the time being be entitled to continue to function as a Sarpanch or a Naib-Sarpanch, but the suspension has not the effect of removing him from his office. At the stage of passing the order of suspension there is neither a "lis" nor any "determination" by the Collector to call for a hearing at this stage.

6. It is significant to notice that though Sub-section (2) provides that the person concerned has to be allowed a reasonable opportunity of showing cause before he is removed from his office such a provision is absent in Sub-section (1). If it was the intention of the legislature that a hearing should be granted at the stage of suspension also, the provision for it could easily be made under Sub-section (1). The omission of such a provision in Sub-section (1) by the legislature to our mind was deliberate because the suspension ordered under this Sub-section was only interim and was considered expedient for the emergent situation and was to be followed by further enquiry.

7. In these circumstances it would be unwarranted and illegal to import the provision of hearing in Sub-section (1) when it is not there in the statute. Rules of natural justice cannot be stretched to this extent.

8. In *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, , their Lordships of the Supreme Court said.

The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of

the law but supplement it.

In *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, following the *Kraipak*'s case¹, the position was reiterated in the following words:

Rules of natural justice are not embodied rules nor can they be elevated to the position of the fundamental rights. Their aim is to secure justice or to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it. If a statutory provision can be read consistently with the principles of natural justice, the Courts should do so. But if a statutory provision either specifically or by necessary implication excludes the application of any rules of natural justice then the Court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.

9. If hearing at the stage of suspension is read by implication in Sub-section (1), that would mean that the legislature envisaged two hearings for the person concerned for the same subject matter and by two different authorities, namely, the Collector and the State Government, a proposition that does not commend itself for acceptance. The purpose of Section 115 is to prescribe the procedure for the removal of the Sarpanch or the Naib-Sarpanch and the enquiry is prescribed only for that purpose.

10. This conclusion is further strengthened by reference to Sub-section (3) of Section 115 which also provides for "suspension" as an interim measure but by the State Government. It empowers the State Government to suspend the Sarpanch or Naib-Sarpanch "if he is not already under suspension in pursuance of an order under Sub-section (1)." If the State Government were to exercise this power of Suspension under Sub-section (3) it will be futile to contend that the order of interim suspension could not be passed by the State Government without hearing pending the enquiry under Sub-section (2). The suspension under this Sub-section and Sub-section (1) being of the same nature, that is, interim suspension pending enquiry, there is no warrant to assume that the legislature contemplated a hearing under Sub-section (1) but not under Sub-section (3). The purpose of suspension under both the Sub-sections is to safeguard larger interests of the Grama Panchayat and the inhabitants of the Grama.

11. In *Ratti Ram v. The Deputy Commissioner, Patiala* 1966 PLR 529, the Deputy Commissioner under the provisions of the Punjab Gram Panchayat Act, 1952 during the course of enquiry suspended a Sarpanch. The order was challenged on the ground that it was vitiated as no hearing was given to the Sarpanch. The Court held,

In substance the order of suspension is based on prima facie view of the charges which have been framed and the Deputy Commissioner is the sole authority to judge whether pending an inquiry, a person should be suspended from service. There is no breach of the statutory provisions or the rules of natural justice in making the order of suspension without a show-cause notice. An order of suspension endures only until it is decided that a person is not to be charged with a disciplinary offence or until disciplinary proceedings are concluded.

12. The learned Counsel for the Petitioner argued that as a result of the suspension the Sarpanch is prevented from discharging his duties and this adversely affects his rights and so before passing the order of suspension it is imperative that he should be afforded a hearing. The submission is unacceptable having regard to the purpose and object of suspension under Sub-section (1) of Section 115. It is provided as an emergent interim measure to safeguard the Interest of the Grama Panchayat and the inhabitants of the Grama. The Collector can exercise this power not only if he is of the opinion that there are circumstances to show that there exist conditions mentioned in Sub-section (1) which are all directed to obtain a smooth working of the Grama Panchayat, but also "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". In such an emergent situation the interest of the general public have to take precedence for the time being and no occasion for hearing before passing the order would arise. In *Srinath Singh Vs. S.K. Bhattacharjee and Others*, , the Petitioner was a dealer in food grains and was appointed as a retail dealer and carried on business as such. On receipt of the report against him in regard to his dealings a show cause notice was issued as to why his appointment should not be revoked under para 3(5) of the West Bengal Rationing Order, 1964. On the same day his appointment was suspended with immediate effect pending enquiry. This interim suspension was challenged. Dealing with the challenge, relying on the observations in the *Kraipak*'s case¹, the Court said,

The order was concerned with is an interim order pending enquiry and it would be alive so long the final order in the proceedings is not passed. Such interim order is to be passed when in the opinion of the State Government immediate suspension pending an enquiry into the charge is necessary in the interest of the general public. In this state of affairs no question of following the principles of natural justice arises in view of the provisions in the Rationing Order and the purpose for which the power is conferred....

13. We are therefore of the view that no hearing is called for before passing an order of suspension by the Collector under Sub-section (1) of Section 115.

14. Mr. Rath, the learned Counsel appearing for the Petitioner, very strongly relied on *Manavikrama Zamorin Raja of Kozhikode Vs. Commissioner, H.R. and C. Endowments*, , where it was held that the interlocutory order suspending hereditary trustee passed in that case was vitiated as it was passed in disregard of the rules of natural justice and no notice had been given to the suspended

trustee. This case related to proceedings u/s 45 of the Madras Hindu Religious and Charitable Endowments Act. The section provided that the Deputy Commissioner or the Commissioner "may suspend, remove or dismiss any hereditary or non-hereditary trustee or trustees thereof" on grounds mentioned in Clauses (a) to (e), Sub-section (2) of the section provided that when it was proposed to take action under Sub-section (1), the Commissioner or the Deputy Commissioner was bound to frame charge against the concerned trustee and give him an opportunity of meeting such charges, of testing the evidence adduced against him and of adducing evidence in his favour. Sub-section (3) further provided that pending the disposal of the charges framed against the trustee, the Commissioner or the Deputy Commissioner could place the trustee under suspension and appoint a fit person to discharge the functions of the trustee. The suspension of the trustee thus even though permissible under Sub-section (3) was also one of the punishments prescribed by the main section. In this situation the Court held,

Any interlocutory order in such a case, should not bring about what has to be done only after a thorough enquiry, and, in any case, the party concerned should be afforded the opportunity of meeting the ground on which urgent action is necessitated....

These observations do not help the Petitioner because in the Act that we are concerned with, suspension by itself is not a punishment but is only a measure of emergency to be taken in the circumstances mentioned in the Sub-section.

15. The learned Counsel then urged that the order of suspension in the instant case was a final order inasmuch as the Petitioner could not go up in appeal against that order, nor could he have any other remedy to question it and therefore the principles of natural justice should be held to be implied in Sub-section (1) of Section 115. Reliance in support of this submission was placed on *The Burma Oil Co. (I) Trading Ltd., Calcutta Vs. The Commissioner of Wealth Tax (Central), Calcutta*, . We do not agree with the learned Counsel because a bare perusal of Sub-sections (1) and (2) of Section 115 would show that suspension is merely an emergent interim measure and it could last only till the conclusion of the enquiry under Sub-section (2). Suspension being not a punishment by itself the order of suspension under Sub-section (1) is not a final order. We see no reason why in these circumstances hearing should be presumed to be implicit in Sub-section (1). *The Burma Oil Co. (I) Trading Ltd., Calcutta Vs. The Commissioner of Wealth Tax (Central), Calcutta*, , cited by the learned Counsel is not relevant at all. In the case the Appellant was asked u/s 94, Code of Criminal Procedure, 1898 to appear in Court and make the denial of possession of the document on oath and be subject to questions by the Court. A revision filed against this order was dismissed on the ground that it was interlocutory. Discussing in the context of these facts what would be an interlocutory order the Court observed:

If the order is directed against a person who is not a party to the enquiry or trial,

and he will have no opportunity to challenge it after a final order is made affecting the parties concerned, then for such a person the order could not be said to be interlocutory.

These observations have no bearing on the point involved in this case. Here the person suspended has a right to show cause during enquiry that the allegations against him are without basis and on his exoneration of the charge the suspension will automatically stand vacated. He is therefore neither without an opportunity nor without a remedy.

16. On the basis of the decision in *Harisingh v. E.F. Deboo* AIR 1969 Guj 39. the learned Counsel also urged that natural justice was a fundamental concept and all statutes must be read consistently with the principles of natural justice. The subject matter of challenge in this case was the order of the Commissioner of Police under the Arms Act suspending the Petitioner's licence for a firearm till the cases mentioned in this order were decided. Section 17(3) of the Arms Act provided that the licensing authority could by order in writing suspend a licence for such period as he thinks fit or revoke a licence in cases mentioned in Clauses (a) to (e), Sub-section (5) of the section further provided that where the licensing authority makes an order varying licence under Sub-section (1) or an order suspending or revoking a licence under Sub-section (3), it shall record in writing the reasons therefore and furnish to the holder of the licence on demand a brief statement of the same unless in any case the licensing authority was of the opinion that it will not be in the public interest to furnish such statement. Section 18 of the Act provided for an appeal from the order of the licensing authority. After reference to these and the other provisions of the Act and its scheme and the Rules framed thereunder the Court found that:

The discretion which is vested in the licensing authority to refuse a licence or to suspend or revoke a licence cannot therefore be interpreted to be an arbitrary discretion which is not reviewable in any of its facets. In such a context the discretion must be a judicial discretion to be exercised fairly and honestly in accordance with the essential principles of natural justice and on the objective existence of the grounds or circumstances envisaged in the relevant section, which are to be set out in the speaking order of the licensing authority.

In this background the general observation was made that every statute must be read consistently with the principles of natural justice and unless there was compelling necessity to make a departure from the principles of natural justice all attempts should be made consistently with the essential principles of natural justice to see that a just balance is struck between the Governmental interest and the citizen's fundamental right by the reasonable restrictions imposed by the statute. These observations very obviously are not attracted for purposes of interpreting Section 115(1) in view of the analysis set out above.

17. Lastly the learned Counsel contended while replying to the arguments of the State that the Petitioner had been elected for 3 years on 13-5-1975 and he was

put under suspension on 31-8-1976, but no enquiry has so far been held and therefore the suspension should be quashed. In support of this submission he placed reliance on State of Madras v. K.A. Joseph 1969 (3) S L R 691. If this is correct and the matter has not proceeded beyond suspension of the Petitioner we are indeed surprised because we find that no stay of proceedings was at any time directed by this Court. In the normal course we should expect that having regard to the limited tenure of the Grama Panchayat such enquiries should be completed with due despatch and without delay. But unfortunately in this case we find that no foundation has been laid in the pleadings to enable us to grant this relief. The learned Counsel appearing for the State very justifiably was not in a position to throw any light on this aspect. He submitted that in the absence of any allegations in the petition on this score he could not state how the matters actually stood and if the enquiry had not proceeded as alleged the reasons therefor. We feel that in the circumstances of this case and the pleadings before us it will not be just and proper to permit the Petitioner to take up this plea for the first time at the stage of final arguments. We however hope that the enquiry under Sub-section (2) of Section 115 will be proceeded with due despatch and without delay and will be completed within four months of the date of receipt of copy of this order by the State Government.

18. For reasons aforesaid, this writ petition fails and is dismissed, but in the circumstances of the case we leave the parties to bear their own costs.

B.K. Ray, J.

I agree.

Petition dismissed.