
(2008) 10 OHC CK 0029
In the Orissa High Court
Case No : Writ Petition (C) No. 14276 of 2008

Choudhary Pradhan

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 22-10-2008

Acts Referred:

Orissa Grama Panchayat Act, 1964 — Section 115(1), 115(2)

Citation : (2009) 1 CLR 480 : (2009) 1 ILR (Ori) 204

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

Bench : Single Bench

Judgement

M.M. Das, J.—Heard learned Counsel for the Petitioner and the learned Counsel for the State.

2. The Petitioner is the elected Sarpanch of Changudia Gram Panchayat in the district of Angul. Upon coming to learn from the news item published in the Oriya daily "The Sambad" dated 20.09.2008 that he (Petitioner) has been suspended from the post of the Sarpanch, he has preferred this present writ application for appropriate relief.

3. During pendency of this writ petition, the Petitioner received a copy of the order dated 24.09.2008 issued by the Joint Secretary to the Government in its Panchayatraj Department. From the said order under Annexure-8 filed in Court today along with an additional affidavit by the Petitioner, it appears that the Petitioner has been suspended from the office of Sarpanch and has been called upon to file a show cause.

4. Mr. Mishra, learned Counsel for the Petitioner submits that the proceeding has been initiated against the Petitioner on the ground that he retained cash in hand more than the permissible limit. According to him, the said amount was being held by the Sarpanch as per the Resolution of the Gram Panchayat, which was to be spent under the NREGS Scheme.

5. Be that as it may, Mr. Mishra, learned Counsel submits that the Petitioner will

be filing his show cause pursuant to the order under Annexure-8 annexed to the additional affidavit filed by the Petitioner in Court today. The power to suspend a Sarpanch is provided u/s 115(2) of the Orissa Gram Panchayat Act, 1964 (for short "the Act"). The said provision clearly stipulates that the State Government may, pending initiation of the proceeding, on the basis of their opinion under Sub-section (1) of the said section, by order, for reasons to be recorded in writing, suspend the Sarpanch. A bare perusal of Annexure-8 clearly discloses that the said order has been passed without due application of mind and contravening Section 115(2) of the Act, as, except reproducing the language of Sub-section (1) of Section 115 of the Act, no specific reason has been assigned as to why the order of suspension has been passed.

6. Ordinarily, when a proceeding is initiated against an employee the power to suspend is given to the employer/the appointing authority, to prevent the employee from meddling with the materials, which may be relevant and may be utilized during course of conducting inquiry against him. Keeping in view the fact that the Sarpanch is an elected representative of the people of the Grama, the Legislature in its wisdom has made its intent clear by providing in Sub-section (2) of Section 115 that while keeping such an elected candidate holding the office of Sarpanch under suspension, the authority concerned should assign reasons for taking such a decision, thereby intending that such order of suspension should not be passed in a routine manner, but should be passed with caution after due circumspection by assigning cogent reasons in support of such order.

7. As I find from the impugned order that no such reason has been assigned except stating that the State Government is satisfied that further continuance of the Petitioner in the office of the Sarpanch will be detrimental to the interest of the inhabitants of the Gram Panchayat, I have no hesitation to quash the impugned order dated 29.1.2008 so far it relates to the suspension of the Petitioner from the office of the Sarpanch of the concerned Gram Panchayat. The Petitioner shall continue as Sarpanch of the said Gram Panchayat. However, liberty is granted to the authority to pass a fresh order under Sub-section (2) of Section 115 of the Act by keeping the above observations in view, if it is deemed fit and proper to keep the Petitioner under suspension. Since the Petitioner has been called upon to file show cause and the charge levelled against him has already been served on him, he may do so and the proceeding shall be expedited.

8. The writ petition is accordingly disposed of.

9. Urgent certified copy of this order be granted on proper application.