
(2001) 12 OHC CK 0007
In the Orissa High Court
Case No : O.J.C. No. 11145 of 1999

Dava Gram Panchayat

APPELLANT

Vs

Pandeswar Sahu and Others

RESPONDENT

Date of Decision : 11-12-2001

Acts Referred:

Grama Panchayat Rules, 1968 — Rule 216

Citation : (2002) 1 OLR 161

Hon'ble Judges : P.K. Balasubramanyan, C.J.; R.K. Patra, J

Bench : Division Bench

Advocate : Ashok Mohanty, T. Rath, S. Natia and J. Sahu, for the Appellant; P.N. Mohapatra, for opp. party No. 1 and P.K. Mohanty, A.G.A. for opp. party Nos. 2 to 4, for the Respondent

Final Decision : Allowed

Judgement

P.K. Balasubramanyan, C.J.—The petitioner in this petition has challenged the order dated 3.8.1999 passed by the Orissa Administrative Tribunal. Cuttack Bench as contained at Annexure-8 on a motion made before it by opposite party No. 1, who was Secretary of Dava Gram Panchayat. The order was passed by the Tribunal even without notice to the Grama Panchayat. By that order the Tribunal directed the District Magistrate and Collector, Bargarh to see that his instructions by letter dated 21.8.1998 are carried out within a fortnight of receipt of a copy of that order.

The District Magistrate and Collector in his turn issued a letter on 27.8.1999 as contained at Annexure-9 to the Grama Panchayat intimating it of the direction of the Tribunal.

2. The Grama Panchayat kept opposite party No. 1 under suspension on the allegation that there were grave charges against him, and in dereliction of his duty as Secretary of the Grama " Panchayat, he acted in a manner prejudicial to the interests of the Grama Sasan. The Grama Panchayat also found that the

Secretary has been prosecuted under the Essential Commodities Act and placed him under suspension in exercise of power under Rule 216 of the Grama Panchayat Rules. The Collector had issued the direction on 21.8.1998 (Annexure-C/3) bringing to the notice of the Grama Panchayat, Rule 216 of the Grama Panchayat Rules and requesting the Panchayat to take immediate steps to reinstate the Secretary-opposite party No. 1 who was under suspension for more than two years and four months. Thereupon the Grama Panchayat took Annexure-6 Resolution requesting the Collector to re-consider his decision contained in the letter dated 21.8.1998.

3. It was at this juncture that opposite party No. 1 approached the Administrative Tribunal with the Original Application and the Tribunal purported to pass the final order, even without notice to the contesting parties, and assuming that it had jurisdiction to entertain the application made by the Secretary of a Grama Panchayat.

4. We find that a Full Bench of this Court in Sri Adwait Chandra Jena Vs. Khandahata Grama Panchayat and Others, has held that the Secretary of a Grama Panchayat does not hold a civil post under the State Government and he is not a Government servant. This would mean that the Secretary could not have approached the Administrative Tribunal in the circumstances of the case. Thus, it is clear that the Tribunal acted without jurisdiction in entertaining the application made by opposite party No. 1 and in proceeding to pass Annexure-8 order. The said order is to be quashed, as it is passed by the Tribunal without jurisdiction and is even otherwise illegal since it is passed in violation of the principles of natural justice. Annexure-8 will thus stand quashed. Annexure-9 is a letter consequent to Annexure-8. The same will also stand quashed.

5. We find that the matter does not end here. Though under Rule 216 of the Grama Panchayat Rules, the Grama Panchayat has power to, suspend a person from the office of the Secretary of the Grama Panchayat, that power can be exercised only during the pendency of a disciplinary proceeding against him under Rule 216 of the Rules, or if the Secretary has been detained in prison during trial, under the provisions of any law for the time being in force or is convicted.

6. In the case on hand, the Grama Panchayat has not initiated any disciplinary proceeding against opposite party No. 1. It is the assured case of the parties that opposite party No. 1 is being prosecuted for offences punishable under the Essential Commodities Act. But it has not ended in conviction. We, therefore, find that the condition for exercise of power by the Grama Panchayat under Rule 216 (b) of the Grama Panchayat Rules does not exist in this case. It is probably in this context that the Collector issued the letter dated 21.8.1998 calling upon the Grama Panchayat to revoke the suspension. Therefore, though we have quashed Annexures 8 and 9, we have to indicate here that the Grama Panchayat is not justified in keeping opposite party No. 1 under suspension in purported exercise of power under Rule 216 of the Grama Panchayat Rules in view of the fact that

the condition for exercise of power as laid down by Rule 216 (a) has not been satisfied. We are, therefore, not inclined to interfere with the letter of the Collector dated 21.8.1998 calling upon the Grama Panchayat to reinstate opposite party No. 1. We may notice incidentally that the said letter of the Collector has not been directly challenged in this writ petition. However, as contended by the learned counsel for the writ petitioner, the Grama Panchayat has passed a Resolution requesting the Collector to withdraw the letter dated 21.8.1998.

7. In the circumstances of the case, apparently the Collector has not taken any decision on the Resolution of the Grama Panchayat in view of the fact that the Administrative Tribunal intervened by its order at Annexure-8. Therefore, while entertaining this writ petition and quashing Annexures 8 and 9 as indicated above, we decline to interfere with the order of the Collector as contained in the letter dated 21.8.1998 at Annexure-C/3 for reinstatement of opposite party No. 1. But, we make it clear that the Grama Panchayat can, if it deems necessary, exercise such power as available to it under Rule 216 of the Grama Panchayat Rules afresh, if the conditions for exercise of the power under Rule 216 (b) are satisfied.

8. Thus, we allow the writ petition to the extent of quashing Annexures 8 and 9, but sustain the letter of the Collector dated 21.8.1998 without prejudice to the right of the Grama Panchayat to proceed in terms of Rule 216 of the Grama Panchayat Rules, if in the opinion of the Grama Panchayat, the Circumstances warrant initiation of such a proceeding. The parties are directed to bear their own costs.

R.K. Patra, J.

I agree.