
(1994) 02 OHC CK 0007
In the Orissa High Court
Case No : O.J.C. No. 8416 of 1993

Gourang Charan Khuntis

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 23-02-1994

Acts Referred:

Constitution of India, 1950 — Article 14

Orissa Grama Panchayat Act, 1965 — Section 115(6)

Citation : AIR 1995 Ori 123 : (1994) 1 OLR 571

Hon'ble Judges : L. Rath, J; D.M. Patnaik, J

Bench : Division Bench

Advocate : J. Patnaik, for the Appellant; S.K. Das, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

L. Rath, J.—An order passed u/s 115(6) of the Orissa Gram Panchayat Act, 1964 (hereinafter referred to as "the Act") removing the petitioner as Sarpanch of Beri Gram Panchayat is the occasion for filing this application. That Section vests power in the Collector (opposite party No. 2) that if he is of the opinion that the Sarpanch has failed in convening any meeting of the Gram Panchayat within a period of three continues months he may, after enquiry as deemed fit, pass orders removing him from office and may also declare him not eligible for election as a member for a period not exceeding one year. By the impugned order the petitioner has also been debarred for one year with effect from 18-10-1993 to be eligible for election to the office of the Sarpanch. Before the order was passed notice was issued to him on 10-5-1993, Annexure 5 to the petition, by the District Panchayat Officer to show cause against suspension/removal since it had been noticed that he was not found in the Gram Panchayat headquarters nor had convened any meeting of it as a result of which its work had come to a stand-still causing violation of Section 19 of the Act, and that in his absence from the headquarters, the Naib Sarpanch was convening and conducting the Gram Panchayat meetings. The petitioner showed cause, as in

Annexure-6, on 20-5-1993 denying the allegations and requested that his representation made to the Collector on 26-3-1993 should be taken into consideration in the matter. In the reply he stated also that the notice to show cause was a camouflage of the failings of the administration and he also asked for a personal hearing. The Collector however passed order on 18-10-1993 as in Annexure-8 which is impugned in the case. In passing the order the petitioner, was not granted any personal hearing.

2. On rule being issued, counter affidavit and a further affidavit have been filed by the opposite parties who are respectively the State of Orissa, the Collector and the Block Development Officer. The stand taken in the affidavits is of the petitioner having come under the mischief of Section 115(6) of the Act as he did not convene any meeting of the Gram Panchayat within three consecutive months which entailed his removal and disqualification. The petitioner has also filed a further affidavit.

3. A factual chronology of events as are revealed from the pleadings of both sides is necessary for appreciation of the questions raised. The Gram Panchayat admittedly had no elected representative some years prior to the election of the petitioner as Sarpanch which was on 25-5-1992. Prior to it the Gram Panchayat was being managed by the officers functioning under the control of the Collector. The previous Secretary of the Gram Panchayat Sk. Md. Hussain resigned from his job with his resignation accepted on 18-5-1992. After election, the petitioner, without having knowledge of the resignation of Sk. Md. Hussain, addressed a letter to him to attend the Gram Panchayat office and have discussion with him. There having been no response to his letter, he addressed a letter to the Chairman of the Beri Panchayat Samiti on 28-8-1992 bringing to his notice of he having not been handed over the charge of the Gram Panchayat and that though he had repeatedly brought the matter to the notice of the Gram Panchayat Extension Officer, no action had been taken. He also stated of the Secretary having not submitted the records of the Gram Panchayat and not appearing in the office of the Gram Panchayat. A similar letter was addressed by petitioner to the Block Development Officer on 27-8-1992. In the letter he informed the Block Development Officer of his having informed him the matter earlier and requested him to permit him to open new Notice Book, Minute Book and Cash Book and appoint a new Secretary so as to begin the Panchayat work. The letters to the Chairman of the Panchayat Samiti and the Block Development Officer are Annexure-1 series to the petition. It is revealed from the counter affidavit of the State that Sk. Md. Hussain handed over the records of the Panchayat to the Gram Panchayat Extension Officer on 3-12-1992 in pursuance of the direction of the Block Development Officer. On 15-12-1992 the Block Development Officer directed the Village Level Worker vide Annexure-G to act as the Secretary of the Gram Panchayat and take over charge from the Gram Panchayat Extension Officer. It is the common case of the parties that the Village Level Worker did not agree to act as the Secretary of the Gram Panchayat in view of a decision taken by their Association not to act as such. Being unable to get the records of the

Gram Panchayat and the Gram Panchayat office having been locked, the petitioner obtained an order from the Sub-Divisional Magistrate for an inventory of the Gram Panchayat office which was carried out in presence of the Additional Tahasildar, Binjharpur. The report of the inventory was made by the Additional Tahasildar on 20-1-1993 to the Block Development Officer informing that the records of the Gram Panchayat were not available in the Gram Panchayat office. The letter is Annexure-H to the counter affidavit. On 3-2-1993 vide Annexure-9 the Block Development Officer directed one Suresh Chandra Panda, the Secretary of Beinsiria Gram Panchayat to act also as the Secretary of the Beri Gram Panchayat and to take over the charge of the records from the Gram Panchayat Extension Officer. On 26-3-1993 the petitioner made representation to the Collector stating in detail the difficulties faced by him in securing the possession of records in spite of his attempts for which he had not been able to function and also made a request for enquiry into the conduct of the Secretary and the Block Development Officer. Thereafter the notice in Annexure-5 was issued to him and on his showing cause, the order on 18-10-1993 was passed.

4. Mr. Patnaik, the learned counsel for the petitioner has urged the exercise of power u/s 115(6) of the act to have been mechanically made without application of mind and without considering the failings of the administration to make available to the petitioner the records which did not permit him to function and also he not to have been given personal hearing though he had asked for the same. It is on the contrary the submission of the learned Government Advocate that since admittedly the meetings of the Gram Panchayat were not convened on the very first day of assumption of charge by the petitioner, the requirements of Section 115(6) were satisfied and no exception can be taken to the order passed.

5. Reliance has been placed by the State on the provisions of Section 19(2)(a) of the Act which vests power in the Sarpanch to convene and preside over the meetings of the Gram Panchayat, as also on Section 124(2) which stipulates the meeting of the Gram Panchayat to be held at least once every month. As regards the custody of records, Section 19(2)(c) has been brought to our notice which provides that the Sarpanch is responsible for proper custody of all records and documents. While that is so, Section 123(b) of the Act provides that the Secretary shall remain in custody of all records and documents. Thus while the Sarpanch remains responsible for proper custody of all records and documents, the actual man in custody of the records and documents is the Secretary. Reliance has also been placed on Rule 224 of the Orissa Gram Panchayat Rules, 1968 that the meetings of the Gram Panchayat shall be held at the office of the Gram Panchayat or at such other public place within the local area as the Sarpanch may, from time to time, determine.

6. The learned Government Advocate appearing for the opposite parties has fairly conceded that in fact the records of the Gram Panchayat were not made available to the petitioner. The resume of the facts made earlier also unmistakably shows the fact. The records had been handed over by Sk. Md.

Hussain to the Block Development Officer on 3-12-1992. It is the specific case of the petitioner that he had approached the Block Development Officer in the matter of non-availability of the records and his inability to function and operate the Gram Panchayat in absence of the records. Yet without handing over the records to him the Block Development Officer directed the Village Level Worker to act as the Secretary and he having refused, again directed on 3-2-1993 Sri Suresh Chandra Panda to act as such. Sri Panda also gave intimation only on 24-2-1993 of having taken the records. Rules 212 and 213 of the Rules stipulate appointment of the Secretary of the Gram Panchayat by the Gram Panchayat subject to approval of the District Panchayat Officer. The Block Development Officer has no function in the matter. But all the same the Block Development Officer purported to appoint Sri Suresh Chandra Panda as Secretary and allowed him to receive the records while all the time the petitioner had been moving him for the records. Even if such is the background of facts it is yet the submission of the learned Government Advocate that it being the statutory duty of the Sarpanch to convene the meeting of the Gram Panchayat, he could have convened the meeting even in absence of the records and that further since Rule 228(ii) proviso of the Rules says that on the failure, neglect or refusal by the Secretary to circulate the notice of the meeting to the members, the Sarpanch is to cause the notice served in any other manner, the petitioner should have taken such steps. We are unable to agree with the submission since the meetings of the Gram Panchayat are to be convened to transact the business of the Gram Panchayat. Such business is to be transacted as per the agenda fixed for the meeting. If the records of the Gram Panchayat are not available and if the inventory of the Gram Panchayat office did not yield the records, it is not understood as to what business could be transacted in the meetings. The petitioner requested the Block Development Officer in his representation on 27-8-1992 to permit him to open new Notice Book, Minute Book and Cash Book, but nothing appears on record that the Block Development Officer had taken steps in that regard. The Sarpanch is elected directly by the electorate. It cannot be possible for him also without the records to know properly all the Ward Members and also their addresses to resort to any alternative mode of serving notices upon them. Taking a pragmatic view it would also mean that without functioning of the Gram Panchayat office the Sarpanch has to make personal endeavours to serve the notice which would not be practicable. In his representation to the Collector made on 26-3-1993 to which reference was made in the petitioner's show cause submitted on 20-5-1993, he specifically brought to his notice the facts that the Block Development Officer had earlier turned down his repeated requests to hand over the records, his having lodged FIR vide P.S. Case No. 235/92 in the matter of the Sk. Md. Hussain having threatened to murder him if he ventures to open the locked G.P. Office, of the inventory made with police assistance, the Block Development Officer's action in appointing the Village Level Worker as the Secretary but his refusal to assume charge and even thereafter the Block Development Officer having not handed over the records to him and instead to have appointed Sri Suresh Chandra Panda as the Secretary

who stays seven to eight kilometers away in a different Gram Panchayat, Sri Suresh Chandra Panda to have met the petitioner and told him that in the matter of assumption of charge he was being threatened by Goondas and rowdies and hence he was remaining silent and his having not received the Gram Panchayat cheque and grain and to have learnt from the Block Development Officer on 25-3-1993 that Sri Panda had left the records with the Gram Panchayat Officer pleading physical illness, etc. While all such facts were brought to the notice of the Collector, yet in passing the order u/s 115(6) those facts do not appear to have been taken note of. The findings of the Collector have been annexed to the impugned order in a separate sheet which show, analysing the points raised by the petitioner in his representation dated 20-5-1993, the Collector to have held as, follows:

"In these paragraphs tie has explained that the records of the Gram Panchayat have not been handed over to him. He has further stated that he has gone to Block for taking over the records of the Gram Panchayat. He has alleged that there was some conspiracy to remove him from the office of the Sarpanch to get his opponent elected. These paragraphs are also not relevant. As provided u/s 123 of the Orissa Gram Panchayat Act, the Secretary of the Gram Panchayat is the custodian of all records. The Dist. Panchayat Officer visited Bari Gram Panchayat and Bari Panchayat Samiti on 24-3-1993. He has found that the Secretary of Bainsaria Gram Panchayat was in charge of Secretary, Bari Gram Panchayat as the previous Secretary-had resigned. The District Panchayat Office? found the proceeding book of the Gram Panchayat and Notice Book of the Gram Panchayat with the Secretary. His report further reveals that the Sarpanch was not staying in the Gram Panchayat Headquarters and that the Gram Panchayat Secretary went to the Sarpanch on 13-2-1993, 14-2-1993, 16-2-1993 and 24-2-1993 for the purpose of issuing notice for G.P. meetings. As the Sarpanch was not available, notice for the G.P. meeting could not be issued. Though Sri Gouranga Charan Khuntia has explained that he has been performing all the duties of the Sarpanch, he has not specifically mentioned if he had convened any meeting of the Gram Panchayat. He has not specifically mentioned as to when he called the meetings , of the Gram Panchayat. On the contrary, it has been reported by the District Panchayat Officer that on verification of the proceeding book of the Gram Panchayat on 24-3-1993 he found that not a single meeting of the Gram Panchayat was called after 28-6-1992 on which Naib Sarpanch was elected. The notice book also revealed the same fact. As such his explanation in these paragraphs is not satisfactory."

Such observations would show that the petitioner's objections were brushed aside as not relevant since u/s 123 of the Act the Secretary is the custodian of the records and the District Panchayat Officer, when he visited Bari Gram Panchayat on 24-3-1993, found the Secretary of the Bainsaria Gram Panchayat to be in charge as the Secretary of the Gram Panchayat and the proceeding book and the notice book of the Gram Panchayat to be with him. The report of the District Panchayat Officer also revealed of the petitioner as not staying at the

Gram Panchayat headquarters and that the Secretary, i.e., Sri Suresh Chandra Panda had gone to him on 13-2-1993, 14-2-1993, 16-2-1993 and 24-2-1993 but to have not met him. Hence as against the representation of the petitioner the two documents which were relied upon by the Collector to decide the matter against the petitioner were the report of the District Panchayat Officer and, as is brought to our notice by the learned Government Advocate, and an intimation of Sri Suresh Chandra Panda to the Block Development Officer on 24-2-1993 annexed to the counter affidavit as Annexure-J informing him of his not finding the petitioner even though he had gone to his village on the dates as mentioned above. Both the report of the District Panchayat Officer as also Annexure-J are not shown to have been ever forwarded to the petitioner and he to have been granted opportunity to rebut the statements made therein. It appears that the entire conclusion that the petitioner was not found in the village was exclusively based upon Annexure-J though however the petitioner had specifically stated Sri Suresh Chandra Panda to have pleaded his inability to assume charge. The petitioner had specifically asked for personal hearing to be afforded before a decision is taken. From the notice to show cause and the reply filed by the petitioner as also the order passed by the Collector, the position unmistakably emerges that there were controversial facts, but the conclusion of the Collector was exclusively based upon only the facts brought to his notice by his subordinates and without making any enquiry regarding the facts, pleaded by the petitioner. The order does not disclose any reason as to why the facts brought to the notice of the Collector by the petitioner were not to be given credence. A personal hearing asked for by the petitioner, if would have been given, would have afforded opportunity to the Collector to juxtapose facts properly for his own appreciation.

7. There is also a further reason for us to take the view that the order of the Collector had not been passed correctly. Section (1516) of the Act contemplates failure to convene" any meeting within three consecutive months. Once it is held that prior to the records being made available, the Sarpanch could not have called the meeting, it is seen that even if the appointment of Sri Suresh Chandra Panda as Secretary is accepted, yet he himself intimated of his having received the records only on 24-2-1993. That he had received the records, which was intimated to the Block Development Officer in Annexure-J, was also never brought to the notice of the petitioner. All the same even if it is taken for a moment that the letter of the Block Development Officer in Annexure-9 had been brought to the notice of the petitioner that Sri Suresh Chandra Panda had been appointed as the Secretary and the petitioner could have called upon Sri Panda to issue notices of meeting, yet three months period had not expired by 10-5-1993, i.e., the date of the notice u/s 115(6) from 24-2-1993 so as to invite the mischief of Section 115(6) against the petitioner.

8. These considerations would impel us to hold the order in Annexure-8 not to have been validly passed and the power u/s 115(6) not have been correctly exercised. We are also to observe that the power under that provision is based

upon the objective of a guarantee to the smooth and regular functioning of the Gram Panchayat. What is purported to be made penal is failure to convene the meetings. A failure to act presupposes an ability to act but yet a deliberate inaction in the matter. Where the action complained of is not the result of any voluntary inaction but is the result of factors beyond the control of the person charged, it cannot be said that the action invites the penalty contemplated. The purpose of the provision is not to afford scope for a twisted endeavour to keep off the elected representative from discharging his function and instead is intended to pose a threat to him that unless he functions properly, he would be liable to be removed. Hence in taking action under the provision what is necessary to be judged is how far the elected representative is guilty of deliberate inaction. It is to be emphasised that non-convening of meeting of the Gram Panchayat for continuous period of three months is not to ipso facto result in removal. The power vested is discretionary and the word used is "may". The function of the Collector hence should be to see that the elected body functions and not that for every reason, whatsoever it may be, the power has to be resorted to put a halt to the functioning. In this context, it is apt to recall what the Court said in 1990 (I) OLR 44 (Lingaraj Sahu v. State of Orissa):

"..... When there is so much of endeavour for reorganisation of Panchayatraj steps are being taken for amendment of the Constitution, fresh law is being enacted for establishment of Local Self Government in the shape of Panchayatraj it is not appropriate that an elected representative is removed from office on trivial infractions. If the standard that has been utilised against the petitioner is applied to all and sundry,, perhaps, none would go unscathed. There would be very few who would not be tarnished by the brush. But there is difference between irregularities and irregularities and when the consequence is removal from office and especially when that is an elected office, there should be care and circumspection while taking action. As this Court has said on another occasion, the Executive should not tinker with an elected office. The mistake may be accidental, the mistake may be unintentional. Only when the mistake is wilful, deliberate and intentional can action be taken. We refer to two decisions of this Court in Tarini Tripathy Vs. Collector and Others, and Baikunthannath Mohanty Vs. State of Orissa and Others,

9. In the result, the writ petition is allowed with costs. The impugned order in Annexure-8 is quashed. The petitioner is to assume office forthwith and the opposite parties Nos. 2 and 3 are directed to hand over the records of the Gram Panchayat to the petitioner immediately. Hearing fee is assessed at Rs.500/-.

D.M. Patnaik, J.

10. I agree.