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(1965) 04 OHC CK 0009

In the Orissa High Court

Case No : O.J.C. No. 88 of 1964

Gouri Prasad Dehuri APPELLANT

Vs

State of Orissa RESPONDENT

Date of Decision : 09-04-1965

Acts Referred:

Orissa Grama Panchayat Act, 1948 — Section 114, 17, 17(1), 17(2), 44
Orissa Grama Panchayat Rules, 1949 — Rule 121, 122, 123, 124, 125

Citation : (1965) 31 CLT 741

Hon'ble Judges : Misra, J;Barman, J

Bench : Division Bench

Advocate : R.C. Ram, for the Appellant; A.G., for the Respondent

Final Decision : Allowed

Judgement

Barman, J.—The Petitioner is a Sarpanch of Sarasara Grama Panchayat in the district of Phulbani. In this writ application he challenges the order of the Government of Orissa removing him from the office of Sarpanch and declaring him not eligible for such office for two yea rs from the date of his removal. The alleged ground of his removal is that he had been vigorously carrying on a campaign against levy of Panchayat tax which is an obligatory tax under the law.

2. The Government notification removing the Petitioner from the office of Sarpanch, so far as material, is this:

Whereas Sri Gouri Prasad Dehuri Sarpanch of Sarasara Grama Panchayat in the district of Phulbani has in the opinion of the State Government wilfully omitted, refused to carry out and disobeyed several provisions of the Orissa Grama Panchayat Act, 1948 and the Orissa Grama Panchayat Rules, 1949, and lawful orders issued there under and abused the powers vested in him as will appear from the following instances:

He has been vigorously carrying on a campaign against levy of Panchayat tax, which is an obligatory tax under the law. This tantamount to a refusal to carry

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out the provisions of the, Act.

Now, therefore, in exercise of the powers conferred by Clause (b) of Rule 35 of the Orissa Grama Panchayat Rules, 1949, the State Government do hereby remove the said Sri Gouri Prasad Dehury from the office of the Sarpanch of Sarasara Grama Panchayat.

3. By a separate notification the State Government declared that the Petitioner shall not be eligible for such office for a period of two years from the date of his removal from the office of the Sarpanch of the said Sarasara Grama Panchayat.

4. The question is: Did the Sarpanch do any act tantamount, to having wilfully omitted, refused to carry out and disobeyed several provisions of the Orissa Grama Panchayat Act, 1948 and the Orissa Grama Panchayat Rules 1949?

5. Rule 35(b) under which the Government removed the Sarpanch from his office is this:

35. The Provincial Government may by notification remove any Sarpanch or Naib-Sarpanch.

(b) if he, in their opinion, willfully omits or refuses to carry out or disobeys the provisions of the Act or any rules, bye-laws regulations or lawful orders issued thereunder or abuses the powers vested in him Rules 38 under which the State Government declared the Petitioner as not eligible for the office of Sarpanch for a period of two years is this:

38. Any person removed from the office of the Sarpanch or Naib-Sarpanch under Sub-rule (b) of Rule 35, Panch or President of an Adalti Panchayat under Sub-rule (b) of Rule 37 and a member of the Grama Panchayat removed under Sub-rule (b) of Rule 38-A shall not be eligible to any of the said offices for a period not exceeding three years as may be specified by Government.

6. The provisions of the Act which the Sarpanch is said to have willfully omitted refused to carry out and disobeyed are as contained in Section 44 on taxes which may be imposed and Section 17 on power of the Sarpanch. Section 44 so far as material provides:

44(1) Subject to the prescribed rules a Grama Panchayat shall impose upon the owner of immovable property and occupier of any building within its local area a tax (hereinafter referred to as the Panchayat tax) according to the circumstances and the property of such owner and occupier.

(2) With the previous sanction of the Provincial Government and subject to such maximum and minimum rates as may be prescribed a Grama Panchayat may impose the following tax, toll, fee or rate

(3) No tax, toll, fee or rate provided under Sub-section (1) and (2) shall be imposed by a District Board in any local area of a Grama Panchayat.

Then what is required of the Sarpanch to give effect to the decision of the Grama

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Panchayat is laid down in Section 17 which says:

17. (1) The Sarpanch shall, in the execution of his duties, give effect to the decisions of the Grama Panchayat:

Provided that if in his opinion any such decision:

(a) is subversive of peace and order in the locality; or

(b) results in manifest injustice or unfairness to an individual or body of individuals or a particular community; or

(c) is generally against public interest the Sarpanch shall refer the matter to the Sub-divisional Magistrate and thereafter act according to such directions as he may receive from such Magistrate.

(2) The Subdivisional Magistrate may, on his motion or on the representation by the Sarpanch set aside a decision of the Grama Panchayat, if he finds that the decision is of the nature enumerated in Clause (a), (b) or (c) of Sub-section (1):

Provided that the Grama Panchayat may appeal to the prescribed authority against such a decision and the decision of the Sub-divisional Magistrate, subject to such appeal, shall be final.

7. The case of the State Government is this: The Petitioner had taken a leading part ani{ as a matter of fact he had championed a "No Panchayat Tax" campaign not only in his own Grama Panchayat but also outside. He also moved in the meeting that levy and collection of Panchayat tax in the Panchayat Samiti area should be stopped in view of the excessive taxation by Government of India and State Government. The Government?s point is that the Petitioner was carrying on sub aversive activities to frustrate one of the main objects of the Act, namely imposit on of Panchayat tax; that the essence of the matter is that the Petitioner by propaganda was preventing the very passing of a resolution for levy of Panchayat tax in the Grama Panchayat; the insistence of the Grama Panchayat against the levy of Panchayat tax is not in public interest; the Petitioner as Sarpanch was under legal obligation to bring it to the notice of the Sub-divisional Magistrate and to act under his direction thereafter as required u/s 17(1)(c). In support of this contention the Government relied on the several Resolutions of the Sarasara Grama Panchayat opposing levy and collection of Panchayat tax in the area.

8. We do not accept the Government contention that u/s 44 a tax is obligatory in that it must be imposed and that no resolution by Grama Panchayat is necessary. The opening words of Section 44 are "Subject to the prescribed rules" which means that imposition of taxes by a Grama Panchayat is subject to the Orissa Grama Panchayat Rules, 1949 made by the Provincial Government u/s 114 of the Orissa Grama Panchayat Act. Rules 121 to 126 are all on Assessment of Panchayat tax, Modifications of assessment, Revision of assessment and Alteration of assessment list.

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9. The imposition of taxes by Grama Panchayat is subject to the rules including, inter alia, Rule 121 which, so far as material, lays down:

121(1) After determining by a resolution to impose a tax upon the owner of immovable property and occupier of any building according to the circumstances and property of such owner and occupier, the Grama. Panchayat shall cause to be prepared an assessment list in Form II of all owners and occupiers of buildings or lands within the local area.

(4) The Grama Panchayat at a meeting shall check the estimates of income as inserted in column 4 and shall then proceed to assess the tax, and make the necessary entry in column 6.

The opening phrase of Clause (1) of Rule 121 "After determining, by a resolution to impose a tax" clearly shows that a validly passed resolution by the Grama Panchayat is a condition precedent to the levy of such tax. In our view, giving a plain construction to the phrase, it means that the Grama Panchayat as a little Parliament can alone by a resolution impose a tax. This appears to be the natural meaning of Clause (1) of Rule 121. It is for the Grama Panchayat to impose by a resolution a tax, and thereafter all things regarding preparation of list, modification, revision and alteration of assessment list, as of course, necessarily follow under Rules 121 to 26.

10. The legislature has thus made it absolutely clear that the Grama Panchayat?s power to impose a tax u/s 44 of the Act is subject to Rule 121 which requires that imposition of a tax must be determined by a resolution as a condition precedent. Section 44 enjoins that a tax be imposed following a particular procedure, namely after determining by a resolution to impose a tax as required by Rule 121 without however expressly declaring what shall be the consequence of noncompliance. In such a case no doubt can be entertained that the intention to be attributed by inference to Section 44 read with Rule 121 is that the provisions are imperative because the whole aim and object of the legislature would be plainly defeated if the command to impose a tax in a particular manner did not imply a prohibition to do it in any other. So, no tax can be imposed unless the Grama Panchayat duly passes a resolution.

11. What happened in this case was this: The Government had proposed imposition of Panchayat tax on the people by the Sarasara Grama Panchayat. The Petitioner as a Sarpanch placed the proposal before the Grama Panchayat for a decision in the matter. In their meetings held on November 2, 1963 the Grama Panchayat passed resolutions declining to impose the tax in view of the present financial position of the people in general. The Sarpanch had intimated the facts to the concerned authorities. In the execution of his duties he was bound to give effect to the decision of the Grama Panchayat according to law. The Government took exception to the conduct of the Sarpanch in that the Sarpanch had not imposed the Panchayat tax. It is said that the Sarpanch had himself persuaded the members to adopt a resolution opposing levy of tax and that he did not

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express his opinion in favour of imposition of the tax. It is further said that the Sarpanch had not referred the matter to the Sub-divisional Magistrate as the decision of the Grama Panchayat is generally against public interest.

12. The question is: Did the Sarpanch in any way willfully omit, refuse to carry out or disobey any of the provisions of he Act or any rules issued there under or in any way abuse the powers vested in him? Our considered view is no in a democratic set-up everybody including the Sarpanch is free to express his opinion with regard to any matter within reasonable restrictions as provided by law. Merely holding or expressing a particular view does not amount to willful omission, refusal to carry out or disobedience or abuse of powers as alleged; free expression of opinion is not prohibited. At the meetings where resolutions against imposition of the tax were passed the Panchayat members as themselves conscious of their responsibilities expressed their views and -the Grama Panchayat had accordingly adopted a resolution opposing imposition of the Panchayat tax due to financial unstability of the people.

13. The Sarpanch Petitioner?s case is that he did not penmade or unduly influence he Panchayat members to express the view in the manner they did; he for himself expressed his own honest view on the proposed tax; in his opinion non-imposition of the tax is not generally against public interest; and so it was not obligatory on his part to refer the matter to the Sub-divisional Magistrate. That apart, it is not disputed that copies of the said resolutions against imposition of the tax were duly sent to the Sub-divisional Magistrate, the sending of the copies of the resolutions by the Sarpanch to the Sub-divisional Magistrate in substantial compliance with the provisions of Section 17(1) of the Act. u/s 17(2) it was still open to the Sub-divisional Magistrate on his own motion to set aside the decision of the Grama Panchayat, if he found that the decision was of the nature enumerated in Clause (a), (b) or (c) of Sub-section (1) quoted above.

14. A resolution by Grama Panchayat being a condition precedent to the imposition of the tax and the Grama Panchayat having adopted a resolution against imposition of such tax, the Petitioner as Sarpanch could not impose the tax u/s 44 of the Act. Under the law, the Sarpanch is bound to execute and give effect to the decision of the Grama Panchayat. It was not open to the Petitioner as the Sarpanch to take a decision by himself and impose the tax until a resolution was passed by the Grama Panchayat. It was the Grama Panchayat who was to take a decision by resolution for imposition or non-imposition of the tax.

15. The Sarpanch Petitioner does not appear to have violated any of the provisions of the Act or the Rules there under. In our view, the removal of the Petitioner from his office as Sarpanch was not justified and not legal.

16. In the view that we have taken that the removal of the Petitioner from the office of Sarpanch was not legal, the Government in pursuance of Rule 38 of the Orissa Grama Panchayat Rules, 1949 cannot declare that the Petitioner shall not be eligible for such office for a period of two years. The question of Rule 38 being

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ultra vires the Act does not therefore arise in this case.

17. The writ petition therefore succeeds and is allowed in terms of the prayer of the Petitioner. The Government notification removing the Petitioner from the office of Sarpanch and declaring him as not eligible for the office of Sarpanch for two years is recalled and cancelled, and an appropriate writ be issued accordingly. There will be no order for costs.

Misra, J.

18. I agree.

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