
(2004) 03 OHC CK 0006

In the Orissa High Court

Case No : Writ Petition (Criminal) No. 13506 of 2003

Jagannath Bag

APPELLANT

Vs

Collector and Others

RESPONDENT

Date of Decision : 08-03-2004

Acts Referred:

Orissa Grama Panchayat Act, 1964 — Section 115, 115(1), 115(2), 15(2)

Citation : (2004) 2 OLR 489

Hon'ble Judges : Sujit Barman Roy, C.J;B.P. Das, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the Petitioner and learned Counsel for the State.
2. By this petition, the Petitioner seeks to challenge the order dated 19.12.2003 issued by the Collector and District Magistrate, Balasore suspending the Petitioner from the post of Sarpanch of Nijampur Grama Panchayat.
3. The Petitioner's grievance is that before the impugned order of suspension dated 19.12.2003 under Annexure-11 was issued, the District Panchayat Officer issued a notice dated 28.10.2003 under Annexure-9 to the Petitioner calling upon him to explain as to why disciplinary action would not be taken against him as provided under the provisions of the Orissa Grama Panchayat Act, 1964 for committing various irregularities mentioned therein. As against the said notice, the Petitioner filed his reply by writing a letter dated 14.11.2003.
4. Despite the aforesaid reply made by the Petitioner against the show cause notice, the Collector by the impugned order dated 19.12.2003 placed the Petitioner under suspension. The said impugned order purports to have been issued by the Collector in exercise of his power under Sub-section (1) of Section 115 of the Orissa Grama Panchayat Act. In the said order of suspension, it was inter alia, pointed out that an amount of Rs. 62,643/- was spent by the Petitioner towards purchase of 41 sets of street light at the cost of Rs. 1,528/- for each

street light. The said lights were of local make. However, in the bill, the Petitioner showed that the street lights were of Bajaj make. By making such purchase, an excess amount has been paid due to not observing the formalities in inviting quotations for such matters.

5. The grievance of the Petitioner is that the allegations made in the impugned order of suspension and also in the show cause notice are mala fide, and they do not constitute any basis for issuing either the show cause notice or the impugned order of suspension. It is the further case of the Petitioner that the reply given by him in response to the show cause notice was not taken into consideration by the Collector while issuing the impugned order of suspension. To substantiate the aforesaid contention, learned Counsel for the Petitioner further pointed out that the impugned order of suspension does not contain any recital whatsoever to show that the alleged irregularities of misappropriation of money were committed by him deliberately and wilfully. According to the learned Counsel for the Petitioner, it is the requirement of Sub-section (1) of Section 115 that unless such irregularities or defalcation are committed deliberately and wilfully, no such suspension order can be issued and hence the impugned order of suspension must be quashed. She also referred to certain decisions of this Court highlighting the aforesaid requirements u/s 115 and unless the irregularities are shown to be deliberate and wilful, no such suspension order can be issued.

6. On the other hand, learned Government Advocate submitted that on 16.12.2003, this matter has been referred to the State Government, and the Govt. is taking all necessary action in accordance with the mandate of the legislature contained in Sub-section (2) of Section 115 of the said Act.

7. We are sorry to observe that when one commits defalcation of money or is indulged in corruption, certainly he commits the same deliberately and wilfully. Hence, for the offence of, defalcation of money, the absence of any recital about deliberate intention or wilfulness is not fatal. Therefore, the decision cited by the learned Counsel for the Petitioner may apply to cases of other irregularities, but the same cannot invalidate a suspension order, which has been issued, inter alia, the grounds of corruption and defalcation of money. It is our firm opinion that unless one acts deliberately and wilfully, he cannot defalcate money. It is the essential ingredient for the offence of defalcation of money that one must act wilfully.

8. As regards other questions raised by the learned Counsel for the Petitioner, we are not expressing any opinion as to the veracity of allegations made against the Petitioner. The allegations may be false or may be true. We are not supposed to enter into such questions in exercise of our jurisdiction in a writ petition. It is for the Government while taking all necessary actions in compliance with the legislative mandate under Sub-section (2) of Section 115 of the Act to take care of the same and find out whether such allegations are false.

9. In these circumstances, as the matter is pending with the Government for

consideration whether or not to revoke the suspension order or to take disciplinary action against the Petitioner, we should not intervene before hand. In the circumstances, we are of further view that no case has been made out in this petition for our interference under the writ jurisdiction of this Court.

10. The writ petition is accordingly dismissed. No order as to costs.