
(2006) 12 OHC CK 0011
In the Orissa High Court
Case No : Writ Petition (C) No. 5164 of 2006

Laxmidhar Tripathy

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 22-12-2006

Acts Referred:

Orissa Grama Panchayat Act, 1964 — Section 115(1), 16(1), 40(A), 45(C)
Penal Code, 1860 (IPC) — Section 167, 467, 468, 472, 477
Prevention of Corruption Act, 1988 — Section 13(1)

Citation : (2006) 12 OHC CK 0011

Hon'ble Judges : N. Prusty, J; I.M. Quddusi, J

Bench : Division Bench

Advocate : Pitambar Acharya, S.K. Pati, P.K. Ray and S.P. Swain, for the Appellant; Srinivas Mohanty, B. Panda, S. Routray and D.K. Mohapatra for O.P. No. 6, for the Respondent

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—This Writ Petition is directed against the impugned Order dated 30.03.2006 passed by the State Government removing the Petitioner from the office of Chairman, Nayagarh Panchayat Samiti.

2. The brief facts of the case are that the Petitioner was elected as Chairman of Nayagarh Panchayat Samiti in the last election held on 11.3.2002. A representation was made by on Sagarika Rath?Member, Nayagarh Panchayat Samiti alleging misappropriation of Panchayat Samiti funds by its Chairman(Petitioner) vis-a-vis non execution of developmental works. Since her representation was not considered, she filed a Writ Petition W.P.(C) No. 12999 of 2004 in this Court which was disposed of vide Order dated 17.12.2004 with a direction to the Secretary to Government of Orissa in Panchayati Raj (G.P.)"Department, Bhubaneswar to take a final decision on the aforesaid representation within a period of six weeks from the date of production of a certified copy of that order. Thereafter, vide Order dated 4.2.2005 the Deputy

Secretary to Government intimated the Petitioner as well as Sagarika Rath (complaint) to appear before the Commissioner-cum-Secretary to Government, Panchayati Raj Department for personal hearing on 7.2.2005 at 1.00 P.M. but the same was adjourned to 31.3.2005 at 11.00 A.M. on which date the Petitioner sought four weeks time to appear before the Commissioner. On 8.4.2005, a charge memo was issued by the State Government along with an order to show cause within thirty days. In the charge memo, the charges were levelled against the Petitioner showing that in the action plan for the year 2002-2003 a sum of Rs. 1.00 lakh was initially approved for renovation of Parbati Sagar (Tank)) at Baunsiapada. Later on the project cost was enhanced to Rs. 1.50 lakhs by District Planning Officer vide letter dated 4.6.2003. As per recommendation of Palli Sabha, work order was issued in favour of one Laxmidhar Sarangi, son of Chandramani Sarangi of village Baunsiapada. On verification of the voters list, it was found that no such person named Laxmidhar Sarangi was there. The case record reveals that Palli Sabha selected the name of Shri Laxmidhar Tripathy which was subsequently changed as Laxmidhar Sarangi through manipulation by the Chairman. Further Laxmidhar Tripathy, the Chairman, in the name of Laxmidhar Sarangi, executed the project namely, "Renovatioin of Parbati Sagar" at Baunsiapada at a cost of Rs. 1.50 lakhs and final payment was received by him on 10.10.2003. Thus he has acted as an executant for the Panchayat Samiti himself as the Chairman by changing his surname from Tripathy to Sarangi.

3. Further the next charge was that the meeting of Panchayat Samiti had been held in a very irregular manner. Instead of holding six meetings in a year only three meetings were held during calendar year 2003. Similarly, only three meetings were held during calendar year 2004. The records produced by the Learned Addl. Government Advocate indicate that in the meantime the Superintendent of Police, Vigilance, Bhubaneswar has intimated vide his letter dated 13.12.2004 addressed to the Director, Panchayati Raj that the Bhubaneswar Vigilance P.S. Case No. 37 of 2004, dated 9.12.2004 u/s 13(1), 13(1) Prevention of Corruption Act, 1988 and under Sections 467, 468, 477, 167, and 472 Indian Penal Code has been registered against the Petitioner and the case is under investigation.

4. In respect of charge memo issued by the Government to the Petitioner, the Petitioner demanded copies of certain documents, i.e., Panchayat Samiti resolution book for the years 2002, 2003, 2004, 2005, Panchayat Samiti meeting me, copies of all letters of district administration regarding non-convening of the Panchayat Samiti meeting during Assembly Session, sanction letter of District Planning Officer dated 4.6.2003, annual action plan for the years 2002-03 and 2003-04, original Palli Sabha book of Baunsiapada Grama Panchayat for the years 2002-03, 2003-04 and copies of the alleged disputed Palli Sabha resolution etc. But vide order dated 16.6.2005 the State Government removed the Petitioner from the office of Chairman, Nayagarh Panchayat Samiti which was challenged by the Petitioner in the Writ Petition (W.P.(C) No. 7219 of 2005). The Writ Petition was disposed of vide order dated 21.2.2006 quashing the impugned

order of -removal with a direction that the Petitioner would appear before opposite party No. 1 with a show cause, if any, by 28.2.2006 and thereafter the inquiry be undertaken and completed by the State Government as expeditiously as possible and preferably by 17.3.2006. It would be open to the Inquiring Officer to refuse grant of liberal adjournment to either of the parties. It was further directed that the Petitioner shall not exercise financial powers without prior approval of the Collector, Nayagarh till completion of inquiry and the result of the fresh selection shall also not be declared till completion of inquiry by the Government. But it appears that no inquiry was conducted by the Government and the Minister, Panchayati Raj Department directed that the inquiry be conducted by the Collector, Nayagarh. Consequently vide order dated 23.3.2006 the Deputy Secretary to Government intimated the Collector, Nayagarh, the relevant part which is quoted as under:

You are therefore requested to conduct an inquiry and furnish specific report:

- (i) to receive the cheque for payment from Block authorities.
- (ii) and to receive the payment from Bank authorities renovation of Parbati Sagar(tank) at Baunsiapada. Detailed information may be collected from the block and bank authorities respectively. The inquiry report along with all documents to your department within a fortnight.

5. The Collector in response to the same sent a letter on 27.3.2006 to the Deputy Secretary intimating that after inquiry it was learnt that the three numbers of bearer cheques were issued by the Block Development Officer, Nayagarh in favour of one Laxmidhar Sarangi, S/o. Chakradhar of village Baunsiapada and the payment has been made to the same person and on the reverse side of the cheque No. 452993 for Rs. 47,890 /- the surname Tripathy" has been corrected and written as "Sarangi", but the signature of the Chairman Laxmidhar Tripathy almost tallies with the signature put on the reverse of the cheque excluding surname and in the Palli Sabha the name of "Laxmidhar Tripathy" has been corrected as "Laxmidhar Sarangi" and attested by Laxmidhar Tripathy, Chairman.

6. As soon as the letter of the District Magistrate, Nayagarh was received by the Deputy Secretary to Government the same was put before the decision making authority, i.e., Minister, Panchayati Raj who passed the orders of removal of the Petitioner from the office of Chairman, Nayagarh Panchayat Samiti without making any proper inquiry at the Government level and only after receipt of the report of the Collector.

7. Therefore, undisputedly no inquiry has been made by the State Government. The Collector who was authorized to make an inquiry did not send any record as to in which manner he had conducted the inquiry and nothing has been mentioned in the inquiry report of the Collector that the Petitioner was given any opportunity to defend himself. Further, delegation of powers by the Minister, Panchayati Raj entrusting the inquiry to the Collector was not permissible under

the law as the State Government was the competent authority to conduct the inquiry and take a decision thereon. Further, nothing is available on record that the application of the Petitioner for supply of documents was ever dealt with.

8. Section 40-A of the Orissa Grama Panchayat Act (hereinafter referred to as "the Act") deals with the removal of Chairman and Vice-Chairman of Panchayat Samiti. The said provision is quoted as under:

40. A. Removal of Chairman and Vice-Chairman of Samiti (1) If in the opinion of the Government the Chairman (the Vice-Chairman or any member elected under Clause (h) of Sub-Section (1) of Section 16 or nominated u/s 45-C) of the (***) Samiti willfully omits or refuses to carry out or, violates the provisions of this Act or any rules bye-laws or orders made or issued thereunder or abuses the powers vested in him and Government are satisfied that further continuance of such person in office would be detrimental to the interest of the (***) Samiti they may, by order, published in the prescribed manner, remove such Chairman, (Vice-Chairman or member, as the case may be) from office:

Provided that no such order for removal shall be made without giving the person concerned a reasonable opportunity of being heard.

(2) No person removed from the office of Chairman, (Vice Chairman or an elected member) under this Section shall for a period of four years from the date of the removal, be eligible to hold any of the said offices.

9. Since in Sub-section (2) of Section 40-A of the Act quoted above, it has been provided that no person removed from the office of Chairman or Vice Chairman or an elected member shall be eligible to hold any of the said offices for a period of four years, there is no doubt that the removal of such office bearers has far reaching civil consequences. Section 40-A as quoted above provides that no such order of removal shall be made without giving the person concerned a reasonable opportunity of being heard. This reasonable opportunity was to be given by the competent authority, i.e., the State Government and not by any other person. It was the subjective satisfaction of the competent authority on conclusion of the inquiry that further continuance of the Chairman in the office would be detrimental to the interest of the Samiti and that subjective satisfaction could be formed only after providing a reasonable opportunity of being heard.

10. In paragraphs 17 and 20 of a recent Judgment, in the case of Smt. Bishnupriya Jena v. State of Orissa and Ors. 2006 (2) OLR 715, in respect of removal of Sarpanch of Grama Panchayat, we have held as under:

17. A bare perusal of Sub-section (1) of Section 115 of the Act as quoted in paragraph-1 above shows that it is necessary for the Government to form their opinion before removing a Sarpanch from his office if he willfully omits or refuses to carry out or violates the provisions of the Act or the rules or orders made thereunder or abuses the powers, rights and privileges vested in him or acts in a manner prejudicial to the interest of the inhabitants of the Grama and that the

further continuance of such person in office would be detrimental to the interest of the Grama Panchayat or the inhabitants of the Grama. This opinion can be formed by the State Government either suo motu or on the report of the Collector or the Project Director, District Rural Development Agency. But in any case it has nowhere now been provided that any preliminary enquiry is to be conducted at any stage. Therefore, a person holding the office of Sarpanch against whom action for removal is to be taken has no other way to get opportunity to participate in the proceedings except the proceedings conducted under Sub-section (1) of Section 115 of the Act.

xxxxxx (20) On the basis of the above discussion and the principles enumerated by the Hon'ble Apex Court in various decisions, this Court is of the opinion that in absence of any specific procedure or rule in arriving at a conclusion by the Government against a person holding the office of Sarpanch, it is necessary that such person should be informed about the charges against him, should also be informed regarding the evidence relied upon in support of the charges, should be provided an opportunity to submit his explanation should be asked as to whether he desires to adduce any evidence in rebuttal and also desires to be heard in person, and should be provided such opportunity accordingly. The decision should only be taken thereafter taking into consideration all evidence relied upon in support of the charges as well as produced by the person so charged in rebuttal thereof.

11. Further, paragraphs 19 and 21 of the decision of the Supreme Court in the case of Canara Bank and Others Vs. Shri Debasis Das and Others, are reproduced hereunder:

19. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the frame-work of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. Expression "civil consequences" encompasses infraction of not merely property or personal lights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

xxxxxxxxx 21. How then have the principles of natural justice been interpreted in the Courts and within what limits are they to be confined ? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi-judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not

the preserve of any particular race or country but is shared in common by all men. The first rule is "nemo judex in causa sua" as stated in (1605) 12 CR. 114 that is, "no man shall be a Judge in his own cause". Coke used the form "aliquis non-debet esse judex in propria causa quia non-potest esse judex at pars (Company Litt. 1418), that is "no man ought to a Judge in his own case, because he cannot act as Judge and at the same time be a party". The form "nemo potest esse simul actor et judex," that is "no one can be at once suitor and Judge" is also at times used. The second rule is "audi alteram partem," that is hear the other side." At times and particularly in continental countries, the form "audietur at altera pars" is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule namely, "qui aliquid statuerit parte inaudita alteram actquam licet- dixerit, haud actquam facerit" that is he who shall decide anything without the other side having been heard although he may have said what is right, will not have been what is right" (See Boeewell's case (1605) 6 CR. 48-b 52-a) or in other words as it is now expressed justice should not only be done but should manifestly be seen to be done." Whenever an order is struck down a vailid being in violation of principles of natural justice there is no final decision of the case and fresh proceedings are left upon. All that is done is to vacate the order assailed by virtue of its inherent defect but the proceedings are not terminated.

12. Since in the instant case no inquiry has been conducted by the State Government in spite of the specification direction issued by this Court in W.P.(C) No. 7219 of 2005 and the Petitioner has not been given "reasonable opportunity of being heard", the impugned order of removal of the Petitioner from the office of Chairman, Nayagarh Panchayat Samiti is not sustainable in the eye of law and the same is liable to be quashed.

13. In the result, the Writ Petition is allowed. The impugned order dated 30.03.2005 passed by the Government of Orissa in Panchayati Raj Department, is quashed. However, it will be open to the State Government to proceed against the Petitioner in accordance with law in the light of the observation made above. However, till the completion of inquiry by the State Government the Petitioner shall not exercise financial powers.

14. No order as to costs.

N. Prusty, J.

15. I agree Writ Petition allowed.