
(2008) 10 OHC CK 0027

In the Orissa High Court

Mayadhar Jena

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 31-10-2008

Acts Referred:

Orissa Grama Panchayat Act, 1964 — Section 124(3), 133(2)
Orissa Grama Panchayat Rules, 1968 — Rule 216(b)

Citation : (2009) 1 OLR 744

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.M. Das, J.—The case of the petitioner is that he is the elected Sarpanch of Kasipada Grama Panchayat. The predecessor of the petitioner was asked by the Collector to convene a special meeting as per Section 124 (3) of the Orissa Grama Panchayat Act, 1964 (for short, "the Act"), for taking action against the Secretary of the Grama Panchayat. The said predecessor - Sarpanch convened a general body meeting in which the Grama Panchayat resolved not to suspend the Secretary. The said resolution was approved by the Sub-Collector. When the matter stood thus, the present petitioner was elected to the office of Sarpanch. Under Annexure-1 to the writ petition, the Collector of the district intimated him that though the Sarpanch was instructed to take action against the Grama Panchayat Secretary as per Rule 216(b) of the Orissa Grama Panchayat Rules, vide office letter No. 1128/ GP dated 15.7.2008, but no action has been taken by the Sarpanch as required and the Grama Panchayat has submitted a resolution wherein the Secretary was set free from all charges made against him. The Collector requested the petitioner to take action against the Secretary - Shri Bhagaban Mohapatra under Rule 216 (b) of the O.G.P. Rules by convening a special meeting. However, since a general body meeting was to be held within a few days from the date of receipt of the letter under Annexure-1, the agenda with regard to suspension of the Secretary was put forward in the said general body meeting, which was duly held. A resolution was taken to suspend the

Secretary in a deferred meeting of the said general body. However, such resolution was not approved by the Sub-Collector. It is the case of the petitioner that as the resolution of the Grama Panchayat to suspend the Secretary pursuant to the letter of the Collector, in the general body meeting, was not approved by the Sub-Collector, the Collector in his letter dated 20.3.2008 required the Sarpanch-petitioner to file Second Appeal u/s 133 (2) of the Act before him and, accordingly, the petitioner also preferred a Second Appeal. However, the petitioner has received a notice dated 24.5.2008 from the Government under Annexure-12 to the writ petition, wherein orders have been passed putting the petitioner under suspension and further directing him to file a show cause in accordance with Sub-section (1) of Section 115 of the Act. Being aggrieved, the petitioner has approached this Court in the present writ petition for appropriate relief.

2. A counter affidavit has been filed by the opp. parties 2 to 4 denying the allegations made by the petitioner against the opp. parties. On being called upon, Mr. Dash, learned Addl. Government Advocate submits that u/s 124 (3) of the Act, the Collector has jurisdiction to convene a special meeting of the Grama Panchayat and, therefore, the Collector has all authority to issue the letter under Annexure-1. The Grama Panchayat though has not convened a special meeting, but in the general body meeting resolved to suspend its Secretary. A report has been submitted to the Government that the petitioner- Sarpanch has not acted as per the instruction of the Collector as he did not convene a special meeting, but instead, considered to include the agenda with regard to suspension of the Secretary in the general body meeting.

3. Learned Counsel for the petitioner vehemently, argues that though u/s 124 (3) of the Act, the Collector has power to requisition a special meeting, but nothing can be read into the said section that the Collector has the power to direct the Grama Panchayat to put the Secretary under suspension. He further submits that, be that as it may, pursuant to the letter of the Collector, the question of putting the Secretary under suspension was considered in the general body meeting and a resolution was taken to put him under suspension. Even when the said order of suspension was dis-approved by the Sub-Collector, as instructed by the Collector under Annexure-11, the petitioner has preferred a Second Appeal before the Collector. It is further contended on behalf of the petitioner that in effect, there was no difference between the general body meeting and special meeting of the Grama Panchayat and, therefore, there is absolutely no reason on the part of the Government to take action against the petitioner and call upon him to file show cause while putting him under suspension as done under Annexure-12.

4. Mr. Das, learned Addl. Government Advocate contends that Section 109 of the Act provides that subject to the provisions of the Act, the Rules made thereunder and in his special or general orders issued by the State Government from time to time, the Collector is required to exercise general power of inspection,

supervision and control over the exercise of power discharge of duties and performance of functions by the Grama Panchayat under the provisions of the act. He, therefore, submits that under the above provision, the Collector has ample jurisdiction to direct the Sarpanch to take action against the Secretary.

5. In order to appreciate the rival contentions, the provisions referred to by the learned Counsel for the parties, are required to be stated. Sections 19, 109 and 124 of the Act read as follows:

19. Powers, duties and functions of Sarpanch -(1) Save as otherwise expressly provided by or under this Act, the executive powers of the Grama Panchayat for the purpose of carrying out the provisions of this Act, shall be exercised by the Sarpanch, who shall act under the authority of the said Grama Panchayat.

(2) Without prejudice to the generality of the provisions of Sub-section (1) the Sarpanch shall, save as otherwise provided in this Act, or the rules made thereunder and subject to such general or special orders as may be issued from time to time by the State Government in that behalf.

(a) convene and preside over the meetings of the Grama Panchayat and conduct, regulate and be responsible for the proper maintenance of the records of the proceeding of the said meetings;

(b) execute documents relating to contracts on behalf of the Grama Sasan;

(c) be responsible for the proper custody of all records and documents, all valuable securities and all properties and assets belonging to or vested in or under the direction, management or control of the Grama Sasan;

(d) be responsible for the proper working of the Grama Panchayat as required by or under this Act;

(e) cause to be prepared all statements and reports required by or under this Act;

(f) exercise supervision and control over the acts and proceedings of all officers and employees of the grama Panchayat;

(g) be the authority to enter into correspondence on behalf of the Grama Panchayat; and

(h) exercise such other powers, discharge such other duties and perform such other functions as may be conferred or imposed on or assigned to him by or under this Act.

109. Control over the Grama Panchayat- Subject to the provisions of this Act, the rules made thereunder and any special or general orders issued by the State Government from time to time, (the Director, Collector, the District Panchayat Officer appointed by the State Government) or such other officer or person specially authorized in that behalf by the State Government shall exercise general powers of inspection, supervision and control over the exercise of powers, discharge of duties and performance of functions by the Grama

Panchayat under the provisions of this Act.

124. Meeting-(1) The Grama Panchayat in the transaction of its business shall follow the procedure provided in this Act and the rules made thereunder.

(2) The Grama Panchayat shall meet for the disposal of its business at least once every month and may hold special meetings whenever circumstances so require.

(3) Without prejudice to the provisions of Section 19 and subject to the rules made in that behalf, the Collector or any other officer empowered by him or not less than one third of the members of the Grama Panchayat may requisition and call for special meetings of the Grama Panchayat.

(4) The quorum at any meeting, the manner or conduct of business and maintenance of the record of the proceedings at any such meeting shall be as may be prescribed.

(5) The Collector or such other officer or person authorized in that behalf by the State Government shall have be right to take part in the proceedings at any meeting of the Grama Panchayat or a Committee thereof, but shall not be entitled to vote at any such meeting.

Provided that the persons referred to in Clause (1) shall also be entitled to a notice of all such meetings.

(6) The members of the Samiti elected under Clause (b) of Sub-section (1) of Section 16 of the Orissa Panchayat Samiti Act, 1959 from the concerned Grama shall take part in the proceedings at any meeting of the Grama Panchayat in relation to the said Grama except the meeting convened u/s 24 of the Act but shall not be entitled to vote at any such meeting.

Rule 216 of the Orissa Grama Panchayat Rules reads as follows:

216. (a) The Grama Panchayat may remove the Secretary of the Grama Sasan from services if he wilfully omits or refuses to carry out the duties and functions entrusted to him under the provisions of the Orissa Grama Panchayats Act, 1964 and the rules or orders made thereunder abuses the powers, rights and privileges vested in him or acts in a manner prejudicial to the interest of the Grama Sasan or by his action causes loss to the Grama Sasan or has been convicted of any offence:

xxx xxx . xxx

(b) The Grama Panchayat may suspend from office of the Secretary of the Grama Sasan pending disposal of the proceedings against him under this rule or if he has been detained in prison during trial, under the provisions of any law for the time being in force.

xxx xxx xxx"

6. A conjoint reading of the above provisions of the Act and the Rules clearly

goes to show that there is no jurisdiction with the Collector to direct the Sarpanch or any Grama Panchayat to take action against any of its employees. Supervision, as contemplated u/s 109 of the Act, relates to supervision over the exercise of powers, discharge of duties and performance and functions of the Grama Panchayat and not any specific employee of the Grama Panchayat. It would be apt to note that the Grama Panchayats are mini legislatures functioning at the grass root level of the State and they should be allowed to function independently and so long they do so and commit no illegalities and do not contravene any of the provisions of the Act or the Rules framed thereunder, interference with their sphere of work by officers of the Government by superimposing their own decision will be an ante-thesis to local governance and such undue influences or imposition of decisions will sound a death knell to local governance which would be contrary to Article 243(G) of the Constitution. In the case of Satis Chandra Das Adhikari and Anr. v. State of Orissa, represented by the Collector, Balasore and Ors. 1987 (2) OLR 538, this Court had the occasion to deal with the provisions of Section 109 of the Act. Considering the said provisions of the Act, this Court held that no doubt u/s 109 of the Act, the Collector or such other officers or persons specially authorized in that behalf by the State Government shall exercise the powers of inspection, supervision and control over the exercise of powers, discharge of duties and performance of functions by the Grama Panchayats under the provisions of the Act. The section confers a general power on the concerned authority so as to advise the Grama Panchayat and to have a watchful control to see if it is exercising its powers, discharging its duties and performing its functions properly or not. In case, it is found that the Grama Panchayat has exceeded its powers or is misusing its powers and it is not discharging its duties and functions properly for the benefit of the people, the prescribed authority can swing into action in exercise of powers u/s 109 so as to take disciplinary action contemplated in Sections 115 and 116 of the Act. The provisions of Section 109 are meant to be corrective and under the guise of the general powers of inspection, supervision and control, neither the Collector nor any other officer specially authorized can usurp the powers of the Grama Panchayat for a particular and specific purpose, act as a substitute or impose other officials and non-officials so as to perform duties which the elected members of the Grama Panchayat are required to perform according to the provisions of the Act. This Court is, therefore, of the view that the Collector has no jurisdiction u/s 109 of the act to direct the Grama Panchayat to take any action against any specific employee of the Grama Panchayat. At this juncture, it is befitting to note that neither the term "General Body Meetings" or "Special Meeting" has been defined in the Act. This Court is also of the view that when no general body meeting has been fixed to be held, if a requisition is made u/s 124 (3) of the Act to hold a meeting, the Same has been termed as a special meeting in the said Section. In the instant case, therefore, no fault can be found with the petitioner, for putting the agenda in the General Body Meeting which was earlier fixed to be held shortly after receiving the requisition letter of the Collector.

7. u/s 124 (3) of the Act, the Collector has the power to make requisition for convening a special meeting and put an agenda to be considered in such meeting of the Grama Panchayat. It is only the Grama Panchayat which is to decide over such agenda and pass a resolution. In the instant case, the agenda was put forward in the general body meeting where the Grama Panchayat resolved to put the Secretary under suspension.

8. Rule 216 (b) of the Rules prescribes the power of a Grama Panchayat to put the Secretary under suspension, but nothing in the said rule is provided that the resolution of the Grama Panchayat is required to be approved by the Sub-Collector. It was, therefore, not required for the Grama Panchayat to send its resolution regarding suspension of the Secretary to the Sub-Collector for approval. Even if, such resolution has not been approved by the Sub-Collector as it was not the requirement of law that he should approve the same, the Secretary should be deemed to have been put under suspension as per the resolution of the Grama Panchayat. The Collector has also erred in issuing a letter to the petitioner to prefer a Second Appeal against the order of disapproval by the Sub-Collector. The Second Appellate authority being the Collector himself, by no stretch of imagination, he could have asked a litigant (the Grama Panchayat) to prefer an appeal before him. The action of the Collector in instructing the Grama Panchayat to prefer the Second Appeal is dis-approved by this Court.

9. As I find that the notice under Annexure-12, where the petitioner-Sarpanch has been put under suspension and a proceeding has been initiated against him, has absolutely no basis to stand, the said notice under Annexure-12 is accordingly quashed. Consequently, the petitioner shall continue to function as Sarpanch of the Grama Panchayat.

10. The writ petition is accordingly allowed.