
(2009) 05 OHC CK 0045
In the Orissa High Court

Naba Kishore Mishra

APPELLANT

Vs

Collector and Others

RESPONDENT

Date of Decision : 05-05-2009

Acts Referred:

Constitution of India, 1950 — Article 243

Citation : (2009) 108 CLT 133 : (2008) 108 CLT 133 : (2009) 122 FLR 843 :
(2009) 1 OLR 1020

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

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Heard Mr. P.K. Singh, learned Counsel for the petitioner and Mr. Patnaik, learned Counsel for the State.

2. The petitioner is a VLW posted under the Odapada Block and is working as the Executive Officer of Bangurusingh Grama Panchayat pursuant to the order of the Block Development Officer annexed as Annexure-4 to the additional affidavit filed by the petitioner today in Court. While working as such, the letter under Annexure-1 was issued by the Collector, Dhenkanal to the following effect:

DISTRICT OFFICE; DHENKANAL. ORDER NO.72/G.P. DT.21.1.09.

Sri Nabakishore Mishra, VLW of Odapada Block is hereby placed under suspension with immediate effect pending-drawal of charges. It is further ordered that during the period of suspension, Sri Mishra is allowed to draw the subsistence allowance as admissible as per Rule 90(2) of Orissa Service Code for a period of six months with effect from the date of his suspension or his actual period of suspension which ever is less.

During the period of suspension, the headquarters of Sri Mishra, VLW is fixed at Odapada Block. Sri Mishra shall not leave the headquarters without obtaining the prior permission of B.D.O., Odapada.

Sd/- Illegible, 20.1.09. Collector, Dhenkanal

2. The Petitioner being aggrieved has approached this Court in the present writ petition for appropriate relief.

3. Mr. Singh, learned Counsel for the petitioners places reliance on the decision in the case of Fakirmohan Das and Ors. v. Government of Orissa and Ors. etc. etc. 2008 (II) DLR 530 in support of his contention that the letter under Annexure-1 issued by the Collector is without jurisdiction. In the said decision, a batch of writ petitions was disposed of by a Division Bench of this Court, wherein the vires of the amended Section 122 of the Orissa Grama Panchayat Act, 1964 was challenged. The Division Bench after analyzing the facts of the case and the law on the point, on elaborately discussing the same, held in paragraphs-17, 18 and 19 of the said judgment as follows:

17. When the matter stands thus, the criticism by the petitioners on Sub-section (3) of Section 122 still remains to be considered. Answer of the State Government on the aforesaid point is flimsy. According to the counter affidavit of the opposite parties - State, the workload in the panchayats has increased and still like to increase many fold in view of different developmental schemes introduced by both the Central Government and the State Government and huge flow of money for developmental and therefore, additional staffs are necessary to cope with that pressure of work and to properly monitor and utilize of the funds allocated and allotted. This part of the logic of the State also run consistent with the provision of law and the competency of the State to create post and to assign/entrust work on the new employees of the Panchayats. But the further logic of the State that the V.A.Ws. and V.L.Ws. remaining in the dual charge are to remain under the specific control and supervision of Director, Collectors and District Panchayat Officers, as stated above is unacceptable, inasmuch as, if the Executive Officers of the Panchayats, who have been bestowed with all the responsibilities relating to maintenance of records, registers and cash be kept under the control of the bureaucrats relating to their service conditions and function, then the Panchayats cannot function within independence and that is how that would interfere with the constitutional mandate of self-government. For the reasons assigned by the State, if V.A.Ws and V.L.Ws are to function as Executive Officers, then their duties and responsibilities with respect to the duties in the Panchayat and their services should be within the control of the Grama Panchayats, or else the Grama Panchayats may suffer for any indiscipline or refusal or negligence to carry out the lawful order of the Sarpanch or Panchayaf, as the case may be. Apart from that there may be clash of priority to carry out specific orders issued by the two authorities (Panchayat and State).

18. The argument of the petitioners is that in the event of conflict between the Rule and the Act, the Rule shall prevail and because the amended provision of Section 122 is in conflict with Rule 212, the amended provision of the Act will be of no avail. Such argument has no legal force inasmuch as it is the trite law that in the event of any conflict between the Act and the Rules made thereunder, the

former will prevail. At the same time, it is trite law that the Rule framed in any statute should be in conformity with the Act and not in deviation, derogation and contradiction of the provision in the Act. Therefore, the Rule, which is in existence conferring different rights and duties to the Secretaries of the Grama Panchayats, is automatically taken away by amendment of Sections 122 and 123. However, when Sub-section (3) of Section 122 confuses the Issue and makes the provision of Sections 122 and 123 inoperative in its amended form and hampers the right of the Panchayats in the matter of self-Government, the orders under Annexure-1 and 3 cannot be accepted as legal, valid and in conformity with Article 243(g) of the Constitution.

19. For the aforesaid reasons, we dispose of these writ petitions with the conclusion that the provisions in Section 122(3) of the Act ultra vires the Constitution and in view of that the amended provision in Sections 122 and 123 of the Act relating to appointment and functioning of the Executive Officers cannot be done validly and legally. As a consequence thereof, the Circulars at Annexures-1 and 3 are also quashed.

Accordingly, all the writ petitions are allowed in part.

4. Section 122 (3) of the Orissa Grama Panchayat Act reads as follows:

122 Executive Officer of Grama Sasan:

(1) and (2) xx xx xx

(3) Subject to the general superintendence and overall control of the Grama Panchayat, the Executive Officer shall function under the control and supervision of the Director, Collector and the District Panchayat Officer.

5. The above Section having been declared ultra vires in the case of Fakirmohan Das and others (supra), the Collector cannot have any control over the services of VLWs or VAWs posted as Executive Officers in the Grama Panchayats. It has been held in the aforesaid decision that such VLWS and VAWs, if are appointed as Executive Officers under the Grama Panchayats, their duties and responsibilities with respect to the duties in the Panchayat and their services should be within the control of the Grama Panchayats, or else, the Grama Panchayats may suffer for any indiscipline or refusal or negligence to carry out the lawful order of the Sarpanch or the Panchayat, as the case may be,

6. In view of the above position of law, the impugned order under Annexure-1 is wholly without jurisdiction and is accordingly quashed. The petitioner shall be permitted to continue to function as the Executive Officer of Bangurusingh Grama Panchayat.

7. As it is submitted that the salary of the petitioner is not being disbursed to him, it is directed that such salary of the petitioner shall be regularly disbursed to him and the arrear salary, if any, shall also be paid to him along with the salary for the month of May, 2009.

8. The writ petition is accordingly allowed.

9. Urgent certified copy of this order be granted as per rules.