
(1963) 03 OHC CK 0015
In the Orissa High Court
Case No : O.J.C. No. 169 of 1962

Narahari Behera and Others

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 26-03-1963

Acts Referred:

Orissa Grama Panchayat Act, 1948 — Section 114
Orissa Grama Panchayat Rules, 1949 — Rule 38A

Citation : AIR 1963 Ori 170 : (1963) 29 CLT 367

Hon'ble Judges : R.L. Narasimham, C.J;G.K. Misra, J

Bench : Division Bench

Advocate : Govind Das and D.P. Mohanty, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Narasimham, C.J.—The four petitioners have challenged the validity of a Notification, No. 3364 dated the 22nd May, 1962, issued by the District Magistrate of Cuttack, removing them from membership of Bharigada Gram Panchayat on the ground that they failed to attend three consecutive meetings of the said Gram Panchayat. The District Magistrate issued this Notification in purported exercise of the powers conferred on him by Clause (b) of Rule 38-A of the Orissa Gram Panchayat Rules 1949 which reads as follows :

"38-A. The District Magistrate may, by notification remove a member of a Grama Panchayat-

(a)

(b) if he absents himself without sufficient cause from three consecutive meetings of the Grama Panchayat."

2. It was alleged in the petition that the petitioners were not given opportunity at any stage to show cause against their removal for their absence at three consecutive meetings, that no enquiry was held and that the order of the District

Magistrate was based on the ex parte report of the Sarpanch who had borne a grudge against the petitioners. In the counter affidavit filed by the Additional District Magistrate of Cuttack it is not asserted that at any stage of the proceedings the petitioners were given an opportunity to explain why they failed to attend three consecutive meetings.

The counter affidavit merely states that the Sarpanch moved the authorities for their removal, that the Audit Inspector of Grama Panchayats made enquiries on the spot, examined the minute book and other papers available in the Panchayat and was satisfied that the petitioners failed to attend 3 consecutive meetings held on the 28th February, 29th March, and 28th April, 1962, though notices of the meetings were duly served on them; but the affidavit does not show that while holding such an enquiry the Audit Inspector gave the petitioners an opportunity to explain why they failed to attend the aforesaid meetings. Nor is it alleged that on receipt of the aforesaid Report of the Audit Inspector the District Magistrate called upon the petitioners to show cause why they may not be removed from the Grama Panchayat for non-attendance of the meetings.

3. The language of Clause (b) of Rule 38-A of the Grama Panchayet Rules, quoted above, is itself sufficient to show that before a member of a Panchayat can be removed for non-attendance, at three consecutive meetings (i) he must be given an opportunity to show cause and (ii) the cause shown must be held to be not sufficient by the District Magistrate. This does not mean that the opportunity to show cause must be given by the District Magistrate himself. It will suffice if any subordinate authority directed by him to enquire into the matter gives the member that opportunity.

Similarly it will suffice if the Sarpanch, before recommending the removal of the member of the Panchayat, calls upon the offending member to show cause why a recommendation may not be made for his removal and forwards the cause shown, if any, to the District Magistrate, and the District Magistrate then applies his mind to the question as to whether the cause shown is sufficient or not. But it is a fundamental requirement of the aforesaid Rule that the opportunity to show cause must be given to the member at some stage or other before the notification is issued for his removal. As the counter affidavit of the Additional District Magistrate does not show that this requirement has been satisfied, we must hold that the notification issued by the District Magistrate was in excess of the authority given by by him, by law.

4. We accordingly quash the aforesaid Notification and declare that the petitioners continue to be members of the Panchayat. All subsequent actions taken up for filling up the vacancy said to have been caused as a result of the removal of the petitioners from membership of the Grama Panchayat, must necessarily be pronounced to be invalid. In fact in the counter affidavit of the Additional District Magistrate it is admitted that the subsequent elections have been vitiated by the failure to comply with the Rules.

5. The petition is accordingly allowed, but there will be no order for costs.

Misra, J.

6. I agree.