

(1963) 04 OHC CK 0006
In the Orissa High Court
Case No : O.J.C. No. 181 of 1962

Nidhi Naik

APPELLANT

Vs

Bhikari Naik and Another

RESPONDENT

Date of Decision : 10-04-1963

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Grama Panchayat Act, 1964 — Section 50, 52
Orissa Grama Panchayat Rules, 1968 — Rule 230(2), 249, 250, 250(1), 250(2)

Citation : (1964) 30 CLT 172

Hon'ble Judges : Narasimham, C.J; Misra, J

Bench : Division Bench

Advocate : B.H. Mohanty and B.K. Ray, for the Appellant; A.G., Asoka Das and L. Rath, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—In this application under Article 226 of the Constitution the order of the Revenue Divisional Commissioner, Central Division, dated 30th September 1961 in Revision Case No. 6/59-60 was challenged on the ground that he had no jurisdiction to interfere with the order of the District Magistrate of Puri.

2. The material facts are as follows:

Within Bhuapalli Grama Panchayat in Puri district a Choukidar named Budhi Naik died on the 11th October, 1934 and hence a vacancy in the post of Choukidar arose. He left a widow and a minor son named Bhikari Naik. The Grama Panchayat failed to submit its recommendation to the district Magistrate as required by Sub-rule (2) of Rule 250 of the Orissa Grama Panchayat Rules suggesting the appointment of another person as Choukidar in that vacancy. The Sub-divisional officer waited for nearly two years and then appointed one Nidhi Naik on the recommendation of the local Police on 14th October 1957. Soon after this appointment was made the recommendation of the Grama Panchayat was

received suggesting that one Dharmu Naik may be appointed as temporary Choukidar until the minor son of the deceased Nidhi Naik attain majority. The Sub-divisional officer however, took no action on this recommendation saying that it was too late. Thereupon Bhikari Naik (Minor son of the deceased Nidhi Naik) through his mother guardian filed Choukidari Appeal No. 2 of 1958 to the District Magistrate of Puri, but the District Magistrate by his order dated 24-2-1959 declined to interfere with the order of the Sub-divisional officer. The matter was then taken up before the Revenue Divisional Commissioner, Central Division, in Revision Case No. 6 of 1960-60 and directed that the minor son of the deceased Choukidar should be appointed but that during his minority, the nominee of the Panchayat, namely Dharmu Naik may officiate in the post.

3. The main contention of Mr. B.H. Mohanty for the Petitioner is that the Revenue Divisional Commissioner had no jurisdiction to entertain the revision petition against the order of the District Magistrate of Puri. Chapter VI of the Orissa Grama Panchayat Act deals with Panchayat Police and the respective powers of the Panchayat and supervisory officers, regarding the appointment and dismissal of control of Panchayat police including Choukidars. Section 50 of that Act (as it stood prior to its amendment by Orissa Act of 1957) stated that the fixing of the number of daffadars and choukidars in a Panchayat and the appointment of such members of the Rural police, shall be made by the District Magistrate "subject to the control of the Revenue Commissioner". Rule 250(1) of the Orissa Grama Panchayat Rules reiterated the same power by saying that the District Magistrate was subject to the control of the Revenue Divisional Commissioner, in regard to the appointment of the requisite number of daffadars and choukidars. Section 50 of the Act was amended by Orissa Act V of 1957 which came into force on the 11th February 1957 and by that amending Act for the words "Revenue Commissioner" the words "prescribed authority" were substituted. But though this amendment came into force as early as 11th February 1957, Government did not issue any amendment to the Rules or notification defining "prescribed Authority" for the purpose of Section 50, until the 29th April 1959, when by a notification, in the Orissa Gazette No. 4748 of that date, Rule 249 of the Orissa Grama Panchayat Rules was amended and the State Government was mentioned as "the prescribed authority" for the purpose of that section. Mr. Mohanty's contention is that from the date of this notification the controlling authority over the acts of the District Magistrate was the State Government and the Revenue Divisional Commissioner, and consequently the Revenue Divisional Commissioner, Central Division, had no jurisdiction to entertain the revision petition against the order of the District Magistrate.

4. The obvious answer to this contention is that the right of appeal and revision accrued to a party on the date on which the original order was passed by the Sub-divisional officer, viz. the 14th October, 1957 appointing the Petitioner as the Choukidar and the subsequent amendment to the Act and the rules charging the forum will not affect the right which accrued on the first date. Moreover, even though Section 50 of the Act was amended by Orissa Act V of 1957, the

notification appointing the State Government as the "prescribed authority" for the purpose of that section was issued only on the 29th April 1959; whereas, the order of the District Magistrate of Puri in this case was passed prior to that date, i.e., on 24th February 1959. Rule 250 of the Grama Panchayat Rules has not yet been amended by the State Government. For the purpose of disposing of this writ application we need not consider whether the Commissioner will have controlling powers under Rule 250 in respect of any orders that may be passed by the District Magistrate after 29th April 1959. But the Revenue Divisional Commissioner has undoubtedly jurisdiction to entertain revision petitions in respect of all such orders passed prior to that date.

5. The next contention of Mr. Mohanty is that even if it be assumed that the Commissioner had jurisdiction under Rule 250(1) to exercise powers of control over the orders of the District Magistrate in appointing the requisite number of daffadars and choukidars in a Grama Panchayat, that power should be exercised only at the time of the constitution of the panchayat and fixing the number of such daffadars and choukidars. According to him that power could not be exercised on subsequent occasions when a vacancy arose in the post of a choukidar or daffadar and that the latter power is dealt with in Section 52 of the Act and Sub-rule (2) of Rule 250 of the Rules. These provisions merely say that when a vacancy occurs the Panchayat shall submit its recommendations to the District Magistrate within one month and if it fails to submit a recommendation the District Magistrate may appoint any person as daffadar or choukidar as he thinks fit. It is true that neither in Section 52 nor in Sub-rule (2) of Rule 230 is it expressly stated that in making such appointments the District Magistrate shall be subject to the control of the Commissioner; but I think that this is implicit on the basis of the maxim that the greater includes the less also. If the Commissioner had control over the appointment of choukidars at the time of their first appointment, he must necessarily be deemed to possess such power in respect of appointment of individual choukidars on subsequent occasions whenever a vacancy arose. Under such circumstances we are not inclined to interfere with the order of the Revenue Divisional Commissioner in this case.

6. But we would suggest to Government to examine carefully the provisions of the Rules especially Rules 250 to 254 of the Grama Panchayat Rules in the light of the amendment made to Rule 249, where by Government were given the powers to control the actions of the District Magistrate under Rule 250. Perhaps some consequential amendments may be required in the aforesaid Rules.

7. The application is dismissed but without costs.

Misra, J.

8. I agree.

9. Application dismissed.