
(2000) 01 OHC CK 0019
In the Orissa High Court
Case No : O.J.C. No. 9854 of 1999

Prafulla Chandra Samantaray

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 31-01-2000

Acts Referred:

Orissa Grama Panchayat Act, 1965 — Section 115(6), 21(4)

Citation : AIR 2000 Ori 120 : (2000) 89 CLT 720 : (2000) 1 OLR 430

Hon'ble Judges : Pradipta Ray, J; L. Mohapatra, J

Bench : Division Bench

Advocate : S.K. Bishra, K.C. Khuntia and B.P. Sarangi, for the Appellant; Sawitri Ratho and S.M. Mishra, for the Respondent

Final Decision : Allowed

Judgement

Pradipta Ray, J.—In this writ petition, the petitioner has assailed an order passed by the Collector, Khurda removing him from the office of the Sarpanch, Baghmari Grama Panchayat in exercise of power conferred by Sub-Section (6) of Section 115 of the Orissa Grama Panchayat Act, 1964 (hereinafter referred to as "the Act") as communicated by Memo No. 438/GP dated July 26, 1999.

2. Admittedly, the petitioner was elected as the Sarpanch, Baghmari Grama Panchayat in the district of Khurda. He was arrested on February 26, 1999 in connection with the investigation of a criminal case in which he was an accused and remanded to jail custody till March 11, 1999 and thereafter again till June 14, 1999. While in custody he handed over charge to the Naib Sarpanch on March 10, 1999. It appears from the enquiry report submitted by the District Panchayat Officer that the petitioner also intimated the said fact of handing over charge to the Block Development Officer, Begunta by his letter No. 38 dated March 20, 1999 and that the Block Development Officer in his turn intimated the said fact of handing over charge by his letter dated March 26, 1999. It appears that Arura Rana and some others Ward Members of the Baghmari Grams Panchayat complained to the Collector, Khurda that the writ petitioner had not

convened any meeting of the Grama Panchayat for a continuous period of three months. On the basis of the said complaint, the Collector, Khurda deputed the District Panchayat Officer, Khurda to make necessary enquiry and to report. On June 18, 1999 the District Panchayat Officer submitted a report disbelieving the claim of the petitioner that he handed over charge to the Naib Sarpanch on March 10, 1999 merely on the ground that the writ petitioner while in custody could not hand over charge in the office of the Grama Panchayat. On the basis of the said report, the Collector, Khurda exercised his power u/s 115 (6) of the Panchayat Act and removed him from the office of the Sarpanch.

3. We have called for the original records and perused the same. It appears to us that the District Panchayat Officer submitted his report without applying his mind and without appreciating the relevant facts and circumstances. It was never claimed by the petitioner that he handed over charge in the office of the Grama Panchayat. Annexure 2 to the writ petition shows that he by a letter written from the Jail on March 10, 1999 handed over charge to the Naib Sarpanch. It is also not correct that charge cannot be handed over by a person in custody. It is possible and desirable that a person holding public office will hand over charge from the custody to a competent person for proper functioning of the office. After the writ petitioner had handed over charge to the Naib Sarpanch, responsibility of convening meeting was shifted to the Naib Sarpanch and the writ petitioner could not be held responsible for not convening the meeting.

4. Before exercising the power under Sub-section (6) of Section 115 of the Panchayat Act, the Collector is required to form an opinion that the Sarpanch was in a position to convene the meeting of the Grama Panchayat but did not deliberately convene such meeting within a period of three continuous months. The said section has given a discretion to the Collector and it is not the intention that mere failure to convene meeting will attract removal even if there are circumstances justifying such failure. The word "may" has been used so that the Collector considers the facts and circumstances and forms an opinion that the failure was deliberate and without any acceptable reason. In support of our view as expressed above, we rely upon a decision of this Court In Gourang Charan Khuntis Vs. State of Orissa and Others, In the said case a Division Bench of this Court had observed :--

"What is purported to be made penal is failure to convene the meetings. A failure to act presupposes an ability to act but yet a deliberate inaction in the matter. Where the action complained of is not the result of any voluntary inaction but is the result of factors beyond the control of the person charged, it cannot be said that the action invites the penalty contemplated. The purpose of the provision is not to afford scope for a twisted endeavour to keep off the elected representative from discharging his function and instead is intended to pose a threat to him that unless he functions properly, he would be liable to be removed. Hence in taking action under the provision what is necessary to be judged is how far the elected representative is guilty of deliberate inaction. It is to be emphasised that non-

convening of meeting of the Grama Panchayat for continuous period of three months is not to ipso facto result in removal. The power vested is discretionary and the word used is "may".

5. Thus, even if the writ petitioner had not handed over charge to the Naib Sarpanch he could not have been held guilty for the convening meeting of the Grama Panchayat as he being in Jail custody was not in a position to convene such meeting. When the Sarpanch was in custody he should have been treated as continuously absent or incapacitated for more than 15 days and in such case either the Naib Sarpanch or any other person or any other member as envisaged in Sub-section (4) of Section 21 should have taken charge of the officer. In the present case, however, the writ petitioner has expressly handed over charge and there by delegated his power to the Naib Sarpanch on March 10, 1999.

6. Miss Savitri Rathe, learned Advocate for some intending interveners has submitted that during absence Sarpanch has no right to delegate the power to convene the meeting of the Gram Panchayat. Such submission appears to be misconceived. Section 21(1) of the Panchayat Act has authorised the Sarpanch to delegate to the Naib Sarpanch any of his power including the power to convene meeting of the Grama Panchayat. Such power of delegation is also available when the Sarpanch is absent or finds himself unable to discharge his functions.

7. It has again and again been pointed out that the prescribed authority exercising penal powers should apply his independent mind and should not mechanically act upon a report obtained from or through the subordinate officers. Removal of an elected Sarpanch should not be exercised in a casual manner as has been done in the present case. We have no hesitation to hold that the Collector in the present case failed to exercise his jurisdiction vested in him objectively and independently.

8. For the foregoing reasons, we set aside the impugned order of removal of Sarpanch. In case the Sarpanch is still in Jail custody, the Naib Sarpanch will exercise the powers and functions of the Sarpanch for proper functioning of the Grama Panchayat. The writ petition is allowed.

L. Mohapatra, J.

9. I agree.