
(2004) 01 OHC CK 0020
In the Orissa High Court
Case No : Writ Petition (C) No. 13298 of 2003

Sanatan Jena

APPELLANT

Vs

Collector and Another

RESPONDENT

Date of Decision : 09-01-2004

Acts Referred:

Orissa Grama Panchayat Act, 1964 — Section 115, 115(1)

Citation : (2004) 97 CLT 319 : (2004) 1 OLR 206

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : Jagannath Patnaik, R.N. Mohanty, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

A. S. Naidu, J.—The petitioner, the elected Sarpanch of Iswarpur Grama Panchayat in the district of Balasore seeks to impugn the order dated 15th December, 2003, Annexure-6, passed by the Collector and District Magistrate, Balasore, opposite party No. 1 in purported exercise of the power conferred upon him u/s 15(1) of the Orissa Grama Panchayat Act, 1964 (hereinafter referred to as "the Act"), suspending the petitioner from the post of Sarpanch.

2. Mr. Jagannath Patnaik, learned Senior Advocate appearing for the petitioner, assails the order Annexure-6 on the ground that the same is contrary to the stipulations embodied in Section 115 of the Act and reveals complete non-application of mind of the Collector and District Magistrate. According to him, the impugned order also does not satisfy the mandatory requirements of the Act.

3. The order of suspension, Annexure-6, reveals that the Collector was of the opinion that the petitioner had abused the powers, rights and privileges vested in him and his action was prejudicial to the interest of the inhabitants of the Grama. In support of such conclusion, the following charges were levelled against the petitioner:

"(1) That the tube-well sanctioned under Watsan Programme for installation in the village Harekrushnapur (Junasahi), Tartua, Bahabalpur and Iswarpur. It was learnt from the enquiry report of Sub-Collector, Nilgiri that all the above tube-wells have been installed on the Royati land.

(2) You have not taken prior permission to sink the tube-well over private land without approval of District Watson Office.

(3) That you have not held any meeting before sinking of tube-well.

(4) That excess measurements were made as against the actual expenditure."

4. Law is well settled that an elected representative like Sarpanch can be suspended only if the pre-requisite conditions stipulated u/s 115(1) of the Act are satisfied. Before passing an order of suspension, the Collector is required to form an opinion that the Sarpanch has wilfully committed any illegality or irregularity. A reading of Section 115(1) of the Act clearly reveals that the Act mandates that if the Collector on an enquiry or inspection made by him or on the report of the Subdivisional Officer is of the opinion that circumstances exist to show that the Sarpanch or the Naib-Sarpanch of a Grama Panchayat "wilfully" omits or refuses to carry out or violate the provisions of the Act or the Rules or Orders made thereunder or abuses the powers, rights and privileges vested in him, he may be suspended. The Legislature in its wisdom has specifically stipulated that the acts of omission or commission by the Sarpanch must be wilful and not through inadvertence.

5. Suspension of an elected representative is indeed a drastic action and should not be taken recourse to cursorily and in a mechanical manner. This view was adopted in an earlier decision of this Court reported in Pradeep Kumar Karji Vs. Collector and Others, . Further while vesting the power upon the Executive to suspend an elected representative, the Legislature thought it just and prudent to provide certain safeguards against arbitrary exercise of such power. As has been held in the decision of this Court reported in 1986 (II) OLR 797 (Tarini Tripathy v. Collector, Koraput and Ors.), all the ingredients stipulated u/s 115(1) of the Act are cumulative. Absence of any one of the said ingredients would make the order of suspension vulnerable. In consonance with Section 115(1) of the Act, the Collector must have to form an opinion that the omissions or commissions found against a Sarpanch were wilful. While bringing the tenure of an elected representative to a premature end, either temporarily or permanently, utmost care and circumspection ought to be exercised. In other words, the right of an elected representative to continue in office for the full tenure should not be lightly tinkered with by the Executive.

6. Considering the submissions made by the learned counsel for all the sides, we feel that the order of suspension of the petitioner Sarpanch, vide Annexure-6, cannot be sustained as the Collector has not arrived at a conclusion that the omissions or Commissions found to have been committed by the petitioner were wilful. Accordingly we have no hesitation to set aside the order Annexure-6.

7. Mr. R. N. Mohanty, learned counsel has entered appearance on behalf of the intervener and he forcefully submitted that apart from the illegalities or irregularities pointed out in the order Annexure-6, there are many other acts of malfeasance and misfeasance committed by the petitioner as Sarpanch and therefore, it is a fit case where the order Annexure-6, should not be interfered with. But the same being not the grounds on which the petitioner is suspended, cannot be taken into consideration.

8. In the result we allow the writ petition. However, without expressing any opinion, we direct that if there are materials to reveal that the omissions or commissions made by the petitioner as Sarpanch were wilful and if the Collector is satisfied-to that effect, it would be open to him to pass necessary orders keeping in view the mandate of Section 115(1) of the Act.