
(2009) 04 OHC CK 0064
In the Orissa High Court
Case No : Writ Petition (C) No. 6579 of 2003

Sanjib Kumar Nayak

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 06-04-2009

Acts Referred:

Constitution of India, 1950 — Article 309
Orissa Grama Panchayat Act, 1964 — Section 123, 123(1)
Orissa Grama Panchayat Rules, 1968 — Rule 212, 213

Citation : (2009) 1 OLR 1069 Supp

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

Bench : Single Bench

Final Decision : Allowed

Judgement

M.M. Das, J.—Heard learned Counsel for the Petitioners and Mr. B. Dash, learned Counsel for the State.

2. The Petitioners in these writ Petitioners underwent the process of selection to be appointed as Secretaries of the Grama Panchayats as provided under Rules 212 and 213 of the Orissa Grama Panchayat Rules, 1968 (hereafter referred to as "the Rules"). After such process of selection, they were selected to be appointed as Secretaries and proposals for appointment of the Petitioners were sent from the respective Grama Panchayats to the District Panchayat Officers as per Rule 213(c) and 213(d) of the Rules. The District Panchayat Officer, in view of the letter dated 1.10.2000 under Annexure-4 to W.P. (C) No. 6579 of 2003, which imposed a restriction on appointment of Secretaries of Grama Panchayats, issued by the Government in its Panchayati Raj Department to all the Collectors, sought for a clarification from the Government under Annexure-3 to the said writ petition, being W.P.(C) No. 6579 of 2003. Since nothing was done thereafter, due to the inaction on the part of the State, the Petitioners in all the aforesaid three writ petitions have approached this Court for appropriate relief.

3. Counter affidavits have been filed on behalf of the opp. parties 2 and 3 in W.P.

(C) Nos. 7036 and 7037 of 2003, inter alia, stating that the Government in its P.R. Department letter dated 4.6.2003 has clarified that where the recruitment has been completed in all respect but no actual appointment has been made in the post of Secretary of Grama panchayat for want of approval, the recruitment in all such cases be declared as withdrawn and no approval for appointment be given in such cases. The copy of the letter dated 4.6.2003 has been annexed to the counter affidavit as Annexure-B/2 in W.P. (C) Nos. 7036 and 7037 of 2003. The said letter refers to a Government Order, being G.O. No. 5140/GP dated 24.3.2001. A copy of the said G.O. has been annexed to the affidavit filed on behalf of the Petitioner in W.P. (C) No. 6579 of 2003, today in Court, as Annexure-5. From the said G.O., it appears that the Government while considering the amendment to the relevant provisions of the Orissa Grama Panchayat Rules, 1968 with regard to appointment of Secretaries, directed that pending such proposed amendment, the method mentioned in the said letter is to be followed with regard to recruitment of Secretaries.

4. Mr. K.P. Mishra, learned Counsel for the Petitioners urges that the Grama Panchayat Rules, 1968 having been framed under the Orissa Grama Panchayat Act are statutory rules. Orders or notifications or executive instructions issued by the Government by way of an administrative action, contrary to such rules, cannot restrict the operation of the statutory rules and, therefore, issuance of the ban order on appointment of Secretaries of Grama Panchayats in accordance with the statutory rules under Annexure-4 to W.P. (C) No. 6579 of 2003, which, in effect, ceases the operation of the statutory rules, cannot be sustained. He further contends that the cause for issuance of ban order, as is clear from the facts of the case, is that the proposal for amendment of the relevant rules was under consideration of the Government and anticipating an amendment to the statutory rules. Accordingly to Mr. Mishra, no executive instruction can be issued stalling the operation of the statutory rules which is in force. As a matter of fact, he submits that even though the ban order was passed in the year 2002, till now, no amendment of the Rules have been made with regard to appointment of Secretary, though the Act has been amended prescribing deputation of VAWs and VLWs as Executive Officers of Grama Panchayats. The statute still provides for appointment of Secretary to Grama Panchayat and Rules 212 and 213 of the Rules are still in operation. In support of his contention, he relies upon the decision in the case of *State of Maharashtra v. Jagannath Achyut Karandikar* AIR 1989 SC 1133.

5. Mr. B. Dash, learned Counsel for the State relying upon the provisions of Section 123 of the Orissa Grama Panchayat Act, 1964 submits that the Government has acted well within its jurisdiction in issuing the ban order under Annexure-4 to W.P. (C) No. 6579 of 2003. Section 123(1) of the Orissa Grama Panchayat Act provides that subject to such general or special order as may be made in this behalf by the State Government, a Grama Panchayat may appoint a Secretary and such other employees for the Grama Sasan. He, therefore, submits that Section 123 of the Orissa Grama Panchayat Act empowers the

Government to pass a ban order as at Annexure-4 to the W.P.(C) No. 6579 of 2003 as well as the subsequent order under Annexure-B/ 2 to the counter affidavits filed in W.P. (C) Nos. 7036 and 7037 of 2003. (emphasis supplied)

6. Annexure-4 to the W.P. (C) No. 6579 of 2003 reads as follows:

Government of Orissa Panchayati Raj (GP) Department. No. LS-1-73/2000 (Pt.2) 19428/GP. Dated 1.10.2000.

To

All Collectors

All Dist. Panchayat Officers.

Sub: Withdrawal of the constitution and functioning of selection Committee for recruitment of GP Secretaries and ban on recruitment thereof.

Sir,

I am directed to say that the method of selection of G.P. Secretaries is being reviewed by the Government. Hence, no selection of candidates for appointment of G.P. Secretaries in different G.Ps. of the district in accordance with this Department order No. 5140/GP dt. 24.3.2001 should be made until further orders.

2. Further, the GPs may be instructed not to make recruitment to fill up the vacancy in the post of Secretary until further orders. The Secretary of the adjoining G.P. may be kept in charge of the G.P. where vacancy exists. This will be effective from the date of issue of this order.

Yours faithfully

S/d- Illegible

Dt. 1.10.2000

Dy. Secretary to Govt.

7. Annexure-B/2 to the counter affidavit in W.P.(C) Nos. 7036 and 7037 of 2003 reads as follows:

Government of Orissa

Panchayati Raj (G.P.) Department.

No. LS-I-82/2002-10615/G.P. BBSR Dtd. 4.6.2003

From:

Shri Swapneswar Baya, I.A.S.

Director, P.R. and Ex-Officio

Additional Secretary to Government.

To

All Collectors. Sub: Clarification on ban on recruitment of G.P. Secretaries.

Sir,

I am directed to say that the recruitment to the post of Grama Panchayat Secretaries has been banned vide this Department G.O. No. 19428/G.P. dated 1.10.2002. A number of references have been made to this Department seeking clarification as to whether the selection of the candidates made prior to 1.10.2002 be approved or not.

2. It is hereby clarified that the Government have decided to post one Executive Officer from the cadres of V.L.Ws./V.A.Ws to every Gram Panchayat and the matter is under process. Consequentially, the post of Secretary will become a dying cadre. Therefore the vacancies, in the post of Gram Panchayat Secretaries shall not be filled up.

3. In all the cases where recruitment in terms of this Department G.O. No. 5140/G.P. dated 24.3.2001 has been completed in all respect but no actual appointment has been made for want of approval, the recruitment of all such cases be declared as withdrawn and no approval nor appointment be given in such cases. Any deviation shall be personal responsibility.

4. This may be brought to the notice of all concerned.

Yours faithfully,

Sd/ -

Director, P.R. and Ex-Officio Addl. Secretary to Government

8. It is an admitted case that Rules 212 and 213 of the Rules have not been amended as yet. Section 123(1) of the Orissa Grama Panchayat Act prescribes that subject to general or special order, as may be made in this behalf by the State Government, the Grama Panchayat may appoint a Secretary and such other employees for the Grama Sasan as may be necessary for enabling the Grama Panchayat to perform its functions, who shall discharge such duties and perform such function as may be prescribed. It, therefore, implies from the above section that the general or special order as envisaged therein cannot be in relation to appointment of the Secretaries or the employees of the Grama Panchayat, but is with regard to the duties which are to be performed and the functions which are to be discharged by such Secretaries or other employees of the Grama Panchayats. This view of mine is more fortified if the section is read conjointly with Rules 212 and 213 of the Rules. It is evident from Annexure-4 to the W.P. (C) No. 6579 of 2003 as well as Annexure-B/2 to the writ petitions, being W.P. (C) Nos. 7036 and 7037 of 2003 that the same are letters written by the Government as executive instructions. In the case of State of Maharashtra (supra), the Supreme Court, while considering a circular of the State of Maharashtra, has categorically laid down that "the circular is an executive

instruction whereas the 1955 Rules are statutory since framed under the proviso to Article 309 of the Constitution. The Government could not have restricted the operation of the statutory rules by issuing the executive instruction. The executive instruction may supplement but not supplant the statutory rules. The High Court was in error in ignoring this well accepted principle."

9. Applying the aforesaid ratio to the facts of the present cases, it is amply clear that Annexure-4 to W.P. (C) No. 6579 of 2003 and Annexure-B/2 to the counter affidavits in W.P. (C) Nos. 7036 and 7037 of 2003 being executive instructions, which do not supplement the statutory rules but supplant, the same cannot be sustained.

10. I, therefore, have no hesitation to quash both the Annexure-4 to W.P. (C) Nos. 6579 of 2003 and Annexure-B/2 to the counter affidavits filed in W.P. (C) Nos. 7036 and 7037 of 2003 respectively. Ordered accordingly.

As a consequence thereof, the District Panchayat Officer - opp. party No. 3 in the writ petitions is directed to consider the proposal submitted to it by the four Grama Panchayats with respect to appointment of the four persons named therein, which includes the Petitioners which he referred to the Government under Annexure-3 to the W.P. (C) No. 6579 of 2003, at his own level and if he finds no reasons to differ with the decision of the respective Grama Panchayats for appointing the Petitioners as Secretaries of the said Grama Panchayats, he shall accord approval to the same. The entire exercise shall be completed within a period of thirty days from the date of production of a certified copy of this order before the District Panchayat Officer by any of the Petitioners.

All the three writ petitions are accordingly allowed.

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