
(2005) 08 OHC CK 0020
In the Orissa High Court
Case No : Writ Petition (C) No. 7608 of 2005

Simanchal Bisoyi

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 02-08-2005

Acts Referred:

Orissa Grama Panchayat (Amendment) Act, 2004 — Section 115(2)
Orissa Grama Panchayat Act, 1964 — Section 115(2), 115(3)

Citation : (2005) 2 OLR 460

Hon'ble Judges : A.S. Naidu, J;A.K. Parichha, J

Bench : Division Bench

Judgement

1. Heard Mr. S.D. Das, learned Sr. counsel for the petitioner and Mr. Mishra, learned Standing Counsel for the State.

2. The petitioner, who is the elected Sarpanch of Phasiguda Gram Panchayat under Digapahandi Block in the district of Ganjam, has approached this Court being aggrieved by the order dated 20.5.2005 passed by the Government of Orissa in Panchayati Raj (G.P.) Department in exercise of the powers conferred upon it under Sub-section (2) of Section 115 of the Orissa Gram Panchayat Act, 1964 (Orissa Act 1 of 1965) and the Rules framed thereunder. By the said order the State Government has been pleased to place the petitioner under suspension from the office of Sarpanch, Phasiguda Gram Panchayat.

3. Mr. Das, learned Sr. Counsel relying upon Section 115 (2) of the amended provisions of the Orissa Gram Panchayats (Amendment) Act, 2004, forcefully submitted that as no proceeding has been initiated till date, the Government lack initial jurisdiction to suspend the petitioner. Sub-section (2) of Section 115 of the amended Act reads as follows :

"(2) The State Government, may pending initiation of the proceeding on the basis of their opinion under Sub-section (1), by order, for reasons to be recorded in writing, suspend the Sarpanch or Naib-Sarpanch, as the case may be, from the office."

3. The words "pending initiation of the proceeding" mean and connote that before initiation or contemplating to initiate proceeding, the Sarpanch can be put under suspension, upon the eventualities mentioned in the said sub-section, quoted supra.

4. In view of the aforesaid provision in the amended Act, the submission made by Mr. Das, cannot be accepted. But then, it appears that the elected Sarpanch was put under suspension as long back as on 20.5.2005 and more than about two months have passed in the meantime. It is not known as to whether any proceeding has been initiated in the meanwhile or as to whether charges have been framed against the petitioner. In absence of such action, an elected member cannot be kept in the dark, for indefinite period. Suspending a Sarpanch without initiation of proceeding, as expeditiously as possible, definitely prejudices his rights.

5. Taking note of the aforesaid situation and the provision of law, while not interfering with the impugned order under Annexure-1, we dispose of this writ application directing the Government, if so advised, to initiate a proceeding within two months hence, failing which the order of suspension shall stand automatically revoked. Liberty is also given to the petitioner to move the concerned authority in consonance with Sub-section (3) of Section 115 of the Orissa Gram Panchayat Act, 1964 for variance of order of suspension. The order be communicated to opposite party No. 1 at the cost of the petitioner.

6. Requisites for communication of the order shall be filed within three days.

7. Urgent certified copy be granted, on proper application.