
(2001) 06 OHC CK 0015

In the Orissa High Court

Case No : Original Jurisdiction Case No. 13550 of 2000

Smt. Indumati Swain

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 18-06-2001

Acts Referred:

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

Citation : (2001) 2 OLR 132

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : Dillip Kumar Mohapatra, for the Appellant; A.G.A., for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—The petitioner has challenged the order passed by the Collector, Jagatsinghpur, suspending the petitioner from the post of Sarpanch in exercise of power u/s 115(1) of the Orissa Grama Panchayat Act. The order of suspension has been annexed as Annexure-1, which is in Oriya. The translation of Annexure-1 reads as follows :

"On the report of the S.D.O., Jagatsinghpur, I, Sri Sarbeswar Mohanty, IAS, Collector, Jagatsinghpur, realise in view of the present circumstances that the further continuance of Smt. Indumati Swain, as Sarpanch of Biswali Grama Panchayat shall be detrimental to the interest of, the Grama Panchayat and the villagers. The allegations against Smt. Swain are apparent from Annexure-Ka.

So, in exercise of power u/s 115(1) and (6) of the Orissa Grama Panchayat Act. I, Sri Sarbeswar Mohanty, IAS, Collector, Jagatsinghpur, hereby suspend Smt. Indumati Swain, from the post of Sarpanch, Biswali Grama Panchayat until further orders."

This order of suspension is being challenged on several grounds. However, it is unnecessary to deal with the other points, as the order cannot be sustained in view of the violation of the provision contained in Section 115(1) of the Orissa

Grama Panchayat Act. The aforesaid provision is quoted hereunder :

"115. Suspension and removal of Sarpanch, Naib-Sarpanch and members - (1) If the Collector, on an inquiry or inspection made by him or on the report of the Sub-divisional Officer, is of the opinion that circumstances exist to show that, the Sarpanch or Naib-Sarpanch of a Grama Panchayat wilfully omits or refuses to carry out or violates the provisions of this Act or the rules or orders made thereunder or abuses the powers, rights and privileges vested in him or acts in a manner prejudicial to the interest of the inhabitants of the Grama and that the further continuance of such person in office would be detrimental to the interest of the Grama Panchayat or the inhabitants of the Grama he may, by order, suspend the Sarpanch or Naib-Sarpanch, as the case may be, from office and report the matter to the State Government."

It has been held in the decision reported in Pradeep Kumar Karji Vs. Collector and Others, that an elected representative such as Sarpanch can be suspended only if the pre-requisite condition u/s 115(1) is satisfied. In the present case, the order of the Collector does not indicate anywhere that he was satisfied that the Sarpanch had wilfully violated the provisions of the Orissa Grama Panchayat Act or had wilfully omitted to do certain act. It has been emphasised in the aforesaid decision that unless the Collector comes to a conclusion that there has been wilful violation, the order of suspension cannot be sustained.

2. Counter affidavit has been filed by the District Panchayat Officer on behalf of opposite parties 2 to 5. There is no indication in the said counter regarding the satisfaction of the Collector regarding the alleged wilful act of the Sarpanch. Therefore, even though the allegations appear to be serious, in the absence of pre-requisite satisfaction of the Collector, I am constrained to quash the order of suspension under Annexure-1.

3. The writ application is accordingly allowed and the petitioner shall be reinstated in the office of Sarpanch forthwith. There will be no order as to costs.