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**(1962) 02 OHC CK 0011**  
**In the Orissa High Court**  
**Case No : O.J.C. No. 191 of 1961**

Sribatsa Karmi

APPELLANT

Vs

District Magistrate and Another

RESPONDENT

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**Date of Decision :** 20-02-1962

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227, 235  
Orissa Grama Panchayat Act, 1964 — Section 144, 17, 17(1), 17(2), 17(3)  
Orissa Grama Panchayat Rules, 1968 — Rule 35, 36

**Citation :** (1962) 28 CLT 472

**Hon'ble Judges :** Narasimham, C.J; Misra, J

**Bench :** Division Bench

**Advocate :** Y.V. Ramdas, for the Appellant;

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## Judgement

Narasimham, C.J.—The Petitioner is the elected Sarpanch of Kaikati Gram Panchayat (constituted under the provisions of the Orissa Gram Panchayat Act), situated in the Subdivision of Athmallik in the district of Dhenkanal.

2. On the 26th August, 1951 the District Magistrate of Dhenkanal passed the following order of suspension against the Petitioner and communicated the same to him:

District Office, Dhenkanal. No. 11950 dated 28th August 1961.

To Sri Sribatasa Karmi, Sarpanch, Kaikat Gram Panchayat, Athmallik Subdivision.

As report regarding your serious misconduct has been received by me such as (1) assaulting a Forest Guard severely on 21-6-1961 while the latter was discharging his duties and (2) in excess of your powers as Sarpanch illegally seized property and (3) squandering Gram Panchayat funds with the intention of using them for your personal benefit, you are suspended from the office of Sarpanch Kaikati, Athmallik, with effect from the (date of your receipt of this order. You are also ordered to hand over charge to your Naib Sarpanch at once pending disposal of the charges.

Sd/- B.K. Mohanti, D/26-8-1961, District Magistrate, Dhenkanal.

The Petitioner protested against the aforesaid order, saying that the District Magistrate had no jurisdiction to place him under suspension. But his protests were unheeded and eventually he was relieved of his duties as Sarpanch.

3. The sole point urged by, Mr. Ramdas for the Petitioner is that neither under the provisions of the Orissa Grama Panchayet Act nor under the provisions of the Rules framed thereunder has the District Magistrate been conferred the power to place under suspension an elected Sarpanch of a Grama Panchayet. It should be noticed however that the order of suspension passed by the District Magistrate was not a final order, but as is clear from the letter cited prove the order was passed "pending disposal of the charges". In other words it was an interim order pending enquiry into serious allegations, including allegations of misappropriation of Grama Panchayet funds, made against the Petitioner. The learned Advocate General contends that the District Magistrate has such powers of suspending a Sarpanch pending final enquiry into his conduct and that such powers are implied in the general powers of super vision and control conferred on him by Section 97(1) of the Orissa Grama Panchayet Act. This is the sole point for decision in this application under Article 226.

4. Some of the relevant provisions of the Grama Panchayet Act and of the Rules made thereunder may now be noticed. That Act was passed for the purpose of establishing and fostering local self Government in the village communities, in the State of Orissa. In pursuance of this object elaborate provisions have been made for the constitution of Grama Sasans, for the election of members of Grama Panchayets by the residents of Grama Sasans, for the election of Sarpanches and Naib Sarpanches by the Grama Panchayets and for describing the sections and duties of the Panchayets and also of the Sarpanches and Naib Sarpanches. The functions of the Sarpanch are specified in Section 17(1) of the Act as follows:

17(1). The Sarpanch shall, in the execution of his duties give effect to the decision of the Grama Panchayet.

It is thus clear that apart from his other functions, he has to act as the executive head of the Grama Panchayet and carry into effect its decisions. Though the Act was intended to train village communities in self government, nevertheless the Legislature thought that as villages were not in a fully advanced stage, extraordinary powers of supervision and control should be given to the local executive officials; Thus Clause (c) of Sub-section (1) of Section 17 of the Act confers on the Sub-divisional Magistrate the power to issue directions to the Sarpanch where a decision made by the Sarpanch is against public interest. Similarly, Sub-section (2) of Section 17 confers on the Sub-divisional Magistrate the power even to set aside the decision of the Panchayet under certain specified conditions. Chapter VIII of the Act deals with external control over the Grama Panchayets. Section 97 on the interpretation of which the success of this

application rests, may be quoted in full:

97. (1) Subject to any rules made under this Act, the District Magistrate shall exercise general powers of inspection supervision and control over the performance of the administrative duties of the Grama Punchayet.

(2) The District Magistrate may, by an order in writing, delegate all or any of his powers and functions under this Act, or under any rules made there under, except the powers conferred under Clause (f) of Section 98, to any officer subordinate to him.

(3) The members of the Orissa Legislative Assembly, the Chairman and Vice-Chairman of a District Board, and such other officers as may be mentioned by the Provincial Government, shall be visitors ex officio of a Grama Sasan, Grama Punchayet and Adalti Punchayet.

It will be noticed that while Sub-section (1) confers on the District Magistrate general powers of inspection, supervision and control over the performance of the administrative duties of a Grama Punchayet, Sub-section (3) confers on the members of the Legislative Assembly and other officers merely powers of a visitor ex officio. Section 98 further specifies the powers of the District Magistrate and may be quoted in full:

98. The District Magistrate may:

(a) cause to be inspected any immovable property owned, used or occupied by a Grama Punchayet or a Joint Committee or any work in progress under the directions of a Grama Punchayet or such Committee;

(b) by an order in writing call for and inspect a book or document in the possession or under the control of a Gramapunchayet or a Joint Committee;

(c) by an order in writing require a Grama Punchayet or a Joint Committee to furnish such statements, reports, copies of documents, relating to the proceedings or duties of the Grama Punchayet, or such Committee as he thinks fit to call for;

(d) record in writing for the consideration of a Grama Punchayet or Joint Committee any observation which he thinks proper in regard to the proceedings or duties of the Grama Panchayat or such Committee;

(e) by a general or special order direct any officer of the departments specified below to attend any meeting of the Grama Punchayet and to advise and assist such Punchayet on any matter affecting the work of the department to which such officer belongs:

(i) The Public Works Department; (ii) The Forest Department; (iii) The Education Department; (iv) The Agricultural Department; (v) The Medical Department; (vi) The Health Department; (vii) The Department of Industries; (viii) The Veterinary Department.

Provided that nothing in this clause shall be deemed to authorize the District Magistrate to issue directions to an officer of any department specified in this clause except with the prior concurrence of the Chief Officer of that Department posted in that district;

(f) whenever due to any defect, irregularity or illegality in the constitution of a Grama Punchayet or by reason of any judgment, decree or order of any court the said Grama Punchayet is unable to exercise its powers or discharge its duties or perform its functions in accordance with the provisions of this Act, appoint authorities in the manner prescribed to act on behalf of the Grama Panchayat so long as such disability, lasts;

(g) subject to the rules made in that behalf in case of neglect of duty or abuse of power, order dissolution and reconstitution or abolition, of a Grama Punchayet;

(2) The District Magistrate shall have the power; to order dissolution and reconstitution or abolition of an Adalti punchayet in case of neglect of duty or abuse of power.

Clauses (a),(b),(c),(d),(e),(f) and (g) quoted above confer extra ordinary powers on the District Magistrates of inspection, supervision and control. In fact clause (g) goes to the extreme limit of conferring on him powers even to direct dissolution or reconstitution of a Grama Punchayet, subject of course to the rules made by Government.

6. Section 99 of the Act gives extraordinary powers in an emergency refer to them here.

7. Turning now to the rules made under the Grama Punchayet Act, I may refer to Rule 35 which empowers the State Government to remove a Sarpanch, or Naib Sarpanch for adequate reasons after giving him an opportunity to show cause as provided in Rule 36.

8. Mr. Ramdas's contentions may now be summarised. The power to place a Sarpanch under suspension pending enquiry into the allegations made against him, may be taken as impliedly conferred on the authority who has the power to remove him from his office. Since Rule 35 of the Orissa Grama Punchayet Rule expressly confers this power of removal only on the State Government and as the power of the District Magistrate u/s 97(1) of the Act is made "subject to the rules made under this Act" he has no jurisdiction to remove a Sarpanch from his office, and consequently he had also no jurisdiction to suspend him from that office-pending enquiry into charges.

9. It is true that an authority who has got the power to remove another authority has undoubtedly jurisdiction to place the latter under suspension pending enquiry into charges made against him. It is on this principle that public servants the District Magistrate but it is unnecessary to are placed under suspension by competent authorities during the pendency of departmental proceedings against them Government's powers to suspends Sarpanch of a Grama Punchayet are

thus beyond doubt. But this does not conclude the matter. As pointed out in AIR 1952 All 687 an order of suspension pending enquiry is only an interim error and is not by way of punishment at all. The power to pass such an interim order may impliedly be held to have been conferred on an authority even though that authority may not have the power to inflict any punishment on the person concerned. Hence, in order to find out whether the District Magistrate has the power to suspend a Sarpanch pending enquiry into charges made against him, one must examine the true scope and content of the general powers of "inspection", "supervision" and "control" conferred on the District Magistrate by Section 97(1) of the Act.

10. The words inspection, supervision and control occur in innumerable statutes, including some of the provisions of the Constitution (see Articles 227 and 235) and their precise significance will depend on the context, bearing in mind the other provisions of the statute in which they are found. According to the Oxford Dictionary one of the important meanings of the word "control" is "to hold in check, curb, restrain from action, to hinder, to prevent": As the Legislature is not presumed to be guilty of tautology, it may be assumed that when it used these different expressions "inspection" "control" and "supervision" it intended to convey three different ideas though there may be some overlapping. The power of inspection would ordinarily include the power merely to advise. whereas the power of supervision and control would include not only the power to advise but also the power to regulate and guide the actions of the authority concerned, and in appropriate cases, even to check or restrain that authority from taking action. Suspension pending enquiry into serious allegations is merely intended to check or restrain the person suspended from performing the functions of his office—though temporarily. It is true that Section 97(1) of the Act does not refer to Sarpanches or Naib Sarpanches expressly but gives "general powers of supervision and control over the performance of the administrative duties of the Grama Panchayat." As already pointed out earlier, Section 17 of the Act confers on the Sarpanches administrative duties in connection with the Panchayat and hence if the District Magistrate has got statutory powers to control the performance of the administrative duties of the Panchayat, he must necessarily have the power of supervision and control over the performance of administrative duties by the Sarpanch; and this power must necessarily include the power to restrain or check him from performing those duties in appropriate occasions, as when there are serious allegations made against him. Thus by adopting the dictionary meaning of the word "control" it appears that the District Magistrate has the power to place a Sarpanch under suspension while an enquiry into charges made against him is pending.

11. Mr. Ramdas raised two objections against this view. Firstly he urged that inasmuch as Section 98 of the Orissa Grama Panchayat Act (quoted above) describes in detail the various powers of the District Magistrate, they should be taken as exhaustive of his power of supervision and control and that as the power to suspend a Sarpanch pending enquiry is not specifically maintained in

that section no such power can be inferred from the general words of Section 97. Secondly he urged that the entire scheme of the Act was to confer self government on village communities and it would be going against the very object of the Act to interpret Section 97 in such a manner as to confer on an Executive Officer the power to suspend an elected representative of the people. In my opinion neither of these contentions can prevail.

12. Though Section 98 describes in detail the general powers of the District Magistrate there is nothing in the language of that Section to suggest that these powers are intended to be exhaustive. Section 97 does not contain the limiting words "subject to the provisions of the following section" so as to limit the powers of the District Magistrate u/s 97, to those specified in Section 98. On the other hand when the Legislature desired that the powers u/s 97, must be somewhat restricted, the only words used to effectuate that object was were "Subject to any rules made under this Act". Hence the powers of the District Magistrate, conferred in Section 97 should be construed in a wide sense and the powers enumerated in Section 98 must be taken to be illustrative of those powers and not to be exhaustive. Sections 97 and 98 read together correspond to provisions dealing with rule making powers usually employed in statutory drafting (see Section 144 of the Act).

13. As regards the second contention of Mr. Ramdas, I must point out that though the object of the Act was to foster self government among village communities, nevertheless the Legislature thought that Grama Panchayats and their office bearers should be placed under some sort of supervision and control. The drastic powers conferred on the Sub-divisional Magistrate by Section 17(1) (c) and Section 17(2), and on the District Magistrate by Sections 98 and 99 seem to show that the Legislature considered it expedient to place even elected representatives of the people under the control of Government's executive officers. Hence there seems to be no principle of statutory construction on the basis of which it can be held that Section 97 of the Act will not give the power to District Magistrate to restrain, even temporarily, an elected Sarpanch of a Grama Panchayat, from functioning in his office if there are specific charges justifying the holding of a regular enquiry against him.

13. I must accordingly hold that the District Magistrate of Dhenkanal had jurisdiction to place the Petitioner under suspension pending enquiry, by virtue of the general powers of supervision and control conferred on him by Section 97(1) of the Act. But by its very nature this power must be exercised in an emergency and he should while promptly reporting the matter to Government who are the final authority to remove the Sarpanch, also see that the enquiry is completed expeditiously. He cannot, under the guise of exercising powers of control keep a Sarpanch under suspension for an indefinite period, because too much delay may virtually amount to removal of the Sarpanch from office which power is expressly conferred only on Government.

Misra, J.

14. I agree.