
(1994) 07 OHC CK 0019
In the Orissa High Court
Case No : O.J.C. No. 4590 of 1994

Subash Chandra Jena

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 29-07-1994

Acts Referred:

Orissa Grama Panchayat Act, 1965 — Section 115, 115(3)

Citation : AIR 1995 Ori 104 : (1994) 78 CLT 662 : (1995) 1 OLR 173

Hon'ble Judges : G.T. Nanavati, C.J.;P.C. Naik, J

Bench : Division Bench

Advocate : B. Mohanty-1, D. Mohanta, J. Katikia, S.K. Nayak-4, M.P. Mohapatra and A.K. Patnaik, for the Appellant; S.P. Misra and J.K. Misra-2, for the Respondent

Judgement

Nanavati, C.J.—The petitioner is the Sarpanch of Thanual Grama Panchayat. He has been elected to that post in 1992. On 30-1-1-1991 a show cause notice was issued to him in a surcharge proceeding, and by an order dated 25-6-1993 he was called upon to pay Rs. 18,191.40. By the impugned order dated 28-6-1994 the petitioner came to be suspended on the ground that as Sarpanch of Thanual Grama Panchayat he has wilfully omitted or refused to carry out or violated the provision of the Orissa Grama Panchayat Act, 1964 (hereinafter "the Act"). The said order of suspension has been passed u/s 115(3) of the Act and is Annexure-5 to this petition.

2. What is contended by the learned counsel for the petitioner is that the petitioner has not committed any act after he became the Sarpanch in 1992 on the basis of which it can be said that he has wilfully omitted or refused to carry out or violated the provisions of the Act or the rules or orders made under the Act. Therefore, he could not have been suspended on that ground, u/s 115. From the counter affidavit filed on behalf of the opposite parties it appears that the impugned action has been taken for the reason that while he was the Sarpanch of the same Grama Panchayat during 1984-89, he had misappropriated a sum of

Rs. 18,191.40. Thus, the default which he is alleged to have commuted was during his earlier tenure as the Sarpanch. Admittedly, no action was taken against the petitioner then.

3. Section 115 of the Act enables the State Government to remove, after an inquiry, a Sarpanch, Naib Sarpanch or a member of the Grama Panchayat from office if it is of the opinion that circumstances exist to show that he wilfully omits or refuses to carry out or violates the provisions of the 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. Sub-section (3) of that section further enables the State Government to suspend a Sarpanch or Naib Sarpanch pending disposal of the removal proceedings. Section 115 appears in Chapter XI which contains provisions conferring power on the State Government to have control over the Grama Panchayats. The legislature appears to have conferred those powers on the State Government so that it can inspect, supervise and control the exercise of powers, discharge of duties and performance of functions by the Grama Panchayats. Section 115 is a part of that scheme and provides for suspension or removal of a Sarpanch, Naib Sarpanch or a member of the Grama Panchayat under certain circumstances. But any action taken under that section would infringe the right of the elected representative to continue in office for the full term. Therefore, while interpreting Section 115 and determining the scope and width of the power available to the Collector under Sub-section (1) and to the State Government under Sub-section (3), both these aspects are required to be kept in mind. The language employed by the legislature clearly indicates that what is contemplated by Section 115 is commission or omission of any prejudicial act mentioned therein by a Sarpanch after he has been so elected and while he continues to hold that office. In case of a Sarpanch who had committed such a prejudicial act in the past, it cannot be said that he wilfully omits or refuses to carry out or violates the provisions of the 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.

4. Thus, on a consideration of the object of the provision, the language employed by the legislature and the drastic effect which the action taken u/s 115 will have, it should be held that Section 115 does not permit suspension or removal on the basis of any prejudicial act or omission done in the past, and that it permits the Collector or the State Government, as the case may be, to take action authorised by it if the circumstances existing at or about the time when the action is proposed to be taken show that the Sarpanch has wilfully committed the prejudicial acts or omitted or refused to do what he was required to do or that he is acting in the said prejudicial manner. In our opinion, such prejudicial acts or omissions done long time before cannot form a valid basis for taking the drastic action of removal or suspension of an elected representative u/s 115.

5. In this case the prejudicial acts or omission which are alleged to have been

done by the petitioner were committed before 1989. The said term of the petitioner as Sarpanch of Thanual Grama Panchayat ended in 1989. After fresh elections, the petitioner was again elected as Sarpanch in 1992. It is, therefore, difficult to appreciate how in his present capacity of Sarpanch he can be said to have wilfully omitted or refused to carry out or violated the provisions of the Act or the rules or orders made thereunder or abused the powers, rights and privileges vested in him or acted in a manner prejudicial to the interest of the inhabitants of the Grama. Therefore, we hold that the order dated 28-6-1994, whereby proceedings have been initiated against the petitioner u/s 115(2), and the order dated 28-6-1994, whereby he is suspended, are bad "as they are not in conformity with Section 115 of the Act. Both these orders are, therefore, quashed and set aside and this petition is allowed accordingly, The rule is made absolute. No order as to costs.

P.C. Naik, J.

6. I agree.