

(1998) 06 OHC CK 0018
In the Orissa High Court
Case No : O.J.C. No. 6100 of 1998

Sudhir Kumar Das

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 24-06-1998

Acts Referred:

Orissa Grama Panchayat Act, 1964 — Section 19, 21
Orissa Grama Panchayat Act, 1965 — Section 21, 21(3)
Orissa Panchayat Samiti Act, 1959 — Section 16, 16(1)

Citation : (1998) 2 OLR 262

Hon'ble Judges : C.R. Pal, J;C.J.MANUOR02081998.htm, J

Bench : Division Bench

Advocate : Manoj Mishra, for the Appellant; Additional Government Advocate, for the Respondent

Judgement

24.6.1998.- 1. The writ petitioner is Naib-Sarpanch of Durgi Gram Panchayat. The Sarpanch of the Durgi Gram Panchayat has gone on leave till the end of this month. The Sub-Collector, Gunpur directed that Naib-Sarpanch cannot attend the meeting of Panchayat Samiti in absence of Sarpanch. Hence the present petition.

It is stated by the learned counsel for the petitioner that meeting of the Gram Panchayat Samiti will take place shortly.

To consider this point, we have to interpret Section 16 of the Orissa Panchayat Samiti Act, 1959 and Section 21 of the Orissa Grama Panchayat Act, 1965.

We have heard the learned counsels at length and we quote below Section 16 of the Orissa Panchayat Act, 1959 and Section 21 of the Orissa Grama Panchayat Act, 1965.

"16. Constitution of the Panchayat Samiti

(1) Every Block shall have Samiti consisting of the following members, namely :

(a) the Chairman and Vice-Chairman of the Samiti elected in accordance with the

provisions of Sub-section (3).

(b) the Block Development Officer of the Block to be appointed by the Government.

(c) one or more of the employees of Government to be nominated by designation on by Government from each of the Departments dealing with Education, Revenue, Agriculture, Co-operative, Veterinary, Gram Panchayat, Forest, Medical, Health, Works, Welfare and such other departments as may be notified by Government:

Provided that Government may in addition to or in lieu of any of the aforesaid employees nominate by designation any of the employees of any non-official organisation engaged in development work within the Block and persons so nominated shall be deemed to be official members for the purposes of this Act :

(d) xxx xxx xxx (e) Sarpanches of the Gram Panchayat situated within the Block :

Provided that a Sarpanch suspended from office under the provisions of the Orissa Grama Panchayats Act, 1964, shall cease to be a member of the Samiti during the period of his suspension and the Naib-Sarpanch or, in his absence, the person elected or nominated u/s 21 of the said Act to exercise the powers and perform the functions of the Sarpanch shall be deemed to be a member of the Samiti in place of the Sarpanch so suspended.

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21. Powers and functions of the Naib-Sarpanch

(1) The Naib-Sarpanch shall exercise such powers, discharge such duties and perform such functions of the Sarpanch as the Sarpanch may from time to time delegate to him in writing and the Sarpanch may in like manner withdraw any or all the powers, duties and functions as so delegated.

(2) When the office of the Sarpanch falls vacant the Naib-Sarpanch shall for all the purposes of this Act, exercise the powers, discharge the duties and perform the functions of the Sarpanch until a new Sarpanch is elected or nominated, as the case may be, to fill up the vacancy.

(3) In the absence of the Sarpanch, the Naib-Sarpanch shall preside over the meetings of the Grama Panchayat and in the absence of both at the meeting any other member of the Grama Panchayat present may be elected to preside over the meeting.

(4) When the office of the Sarpanch is vacant or the Sarpanch has been continuously absent from the Grama for more than fifteen days or is incapacitated for more than fifteen days and there is either a vacancy in the office of the Naib-Sarpanch or the Naib-Sarpanch has been continuously absent from the Grama for more than fifteen days or is incapacitated for more than

fifteen days the powers and functions of the Sarpanch shall devolve on a member of the Grama Panchayat from out of a panel of three such members in order of priority elected in the prescribed manner by the Grama Panchayat in that behalf, who shall be the officiating Sarpanch and shall exercise the powers and perform the functions of the Sarpanch subject to such restrictions and conditions, if any, as may be prescribed until a Sarpanch or Naib-Sarpanch assumes office, on being duly elected or, as the case may be, takes charge of his office :

Provided that in the absence of any such panel or in the case of non-availability of the members on such panel the Sub-Divisional Officer may nominate one of the members of the Gram Panchayat to officiate as the Sarpanch and to exercise the powers and perform the functions of the Sarpanch in accordance with the provisions of this sub-section."

In the long title of the Orissa Panchayat Samiti Act, 1959, it is stated that the Act is for the establishment of Panchayat Samitis in the State of Orissa and for matters connected therewith or incidental thereto in the manner hereinafter referred. In the long title of Orissa Grama Panchayat Act, 1965, it is stated that this is an Act to consolidate and amend the law relating to Grama Panchayats in the State of Orissa.

Mr. Mishra, learned counsel for the petitioner has urged that while interpreting the provisions of Section 16 of the Panchayat Samiti Act, 1959, Section 21 of the Orissa Panchayats Act, 1965, will be applicable.

Proviso to Clause (e) of Sub-section (1) of Section 16 of the Panchayat Samiti Act, 1959 is limited inasmuch as in case of suspension of Sarpanch under the provisions of Orissa Panchayats Act, 1964, he shall cease to be a member of the Samiti during the period of his suspension and Naib-Sarpanch shall perform the functions of Sarpanch and shall be deemed to be a member of Samiti in place of the Sarpanch so suspended. But in the case at hand the Sarpanch is on leave. Therefore, applying the above provision, Naib-Sarpanch cannot exercise the powers of Sarpanch.

We may also refer to Section 19 of the Orissa Panchayats Act, 1965, where it has been clearly stated that Sarpanch shall convene and preside over the meetings of Grama Panchayat and conduct, regulate and be responsible for the proper maintenance of the records of the proceeding of the said meeting. Though in Sub-section (3) of Section 21 of the said Act, it has been laid down by the legislature that in absence of Sarpanch, the Naib-Sarpanch shall preside over the meetings of the Grama Panchayat and in the" absence of both at the meeting any other member of the Grama Panchayat may be elected to preside over the meeting. Thus, Section 21 provide s that Naib-Sarpanch can exercise the powers of Sarpanch when the office of Sarpanch falls vacant. Otherwise, in the meeting of the Grama Panchayat, a person has to be elected to preside over the meeting and Naib-Sarpanch as a matter of right cannot preside over the meeting. While

exercising powers u/s 21 of the Panchayats Act, 1965, he does not automatically become a member of the Panchayat Samiti. Only when the Sarpanch is under suspension in accordance with the provisions of the Orissa Grama Panchayats Act and ceases to be member of the Panchayat Samiti, the Naib-Sarpanch shall be deemed to be a member of the Samiti in place of the Sarpanch and he is entitled to attend the meetings of the Panchayat Samiti.

In the case at hand, the leave of Sarpanch is only up to 30th of this month. Therefore, no prejudice will be caused, if the Naib-Sarpanch is not allowed to attend the meeting. If necessary, that meeting may be deferred till the Sarpanch rejoins in his duty after leave, so that it can be held in accordance with law.

For the reasons stated above, the petition is closed.