

(1999) 08 OHC CK 0023

In the Orissa High Court

Case No : Original Jurn. Case No. 6959 of 1999

Sukanta Bhoi

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 10-08-1999

Acts Referred:

Constitution of India, 1950 — Article 14

Orissa Grama Panchayat Act, 1965 — Section 115(1)

Citation : AIR 2000 Ori 28 : (1999) 2 OLR 264

Hon'ble Judges : P.K. Patra, J;P.C. Naik, J

Bench : Division Bench

Advocate : C.A. Rao, S.K. Behera and A. Tripathy, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.C. Naik, J.—In this petition under Articles 226 and 227 of the Constitution of India, petitioner Sukanta Bhoi. Sarpanch (under suspension) of Satyabhamapur Grain Panchayat under Baliana Police Station in the district of Khurda has challenged the order dated 27-5-1999 of his suspension passed by the Collector and District Magistrate, Khurda u/s 115 (1) of the Orissa Gram Panchayat Act, 1964 (Orissa Act 1 of 1965) (hereinafter referred to as "the Act"), communicated to him vide letter No. 337 dated 27-5-1999, Annexurc-4 to the writ petition.

2. The petitioner had been elected as the Sarpanch of Satyabhamapur Gram Panchayat in January. 1997. It is alleged that since he was not owing allegiance to the Ruling Party of the State, he incurred the wrath of the local leaders. At the instance of the local leaders who were opposed to the petitioner, the sub-Collector, Bhubaneswar, vide his letter dated 16-12-1998 (Annexure-1) alleged that certain financial irregularities were committed by the petitioner while functioning as the Sarpanch of the Gram Panchayat and asked him to show cause. The allegations were as follows :--

(1) Without obtaining approval of higher authority or Grama Sabha, Rs. 5,000.00

had been spent as Advocate's fees in a case pending before the Orissa High Court, i.e. O. J. C. No. 6145/97.

(2) There was temporary misappropriation of Rs. 12,000.00 out of Grama Fund for seven months.

(3) Without obtaining approval of Grama Sabha, an advance of Rs. 21,500.00 had been taken for execution of nine works.

(4) Without resolution of Grama Sabha Rs. 24,804.00 had been taken as evidence for J.R.Y. Fund. Rs. 36,000.00 had been given as advance for construction of Mirapur Bhoi Sahi Road; Rs. 5,000.00 had been given as advance for Gotala Village Trinath Kothaghar; Rs. 17,000.00 had been given in advance towards Hirapur Sahabaz Bhoi Kothaghar and Rs. 10,000.00 had been given in advance for construction of the house of Banku Bhoi before completion of the works.

(5) Work orders had been given for Rs. 57,242. DD when only Rs. 5076.00 was in J.R.Y. Fund.

(6) The balance auction amount towards Tankapani Fair-weather Road had not been collected; and

(7) There was insertion of a new page in the Grama Sabha Resolution Book.

3. According to the petitioner, though he properly explained the above alleged irregularities, the Sub-Collector submitted a report to the Collector and District Magistrate, Khurda, inter alia, stating therein that the petitioner did not show cause in response to his letter dated 16-12-1998 (Annexure-I). The Collector & District Magistrate without asking the petitioner to show cause to the allegations levelled against him, passed the impugned order of suspension on 27-5-1999 (Annexure-4) on the ground that the petitioner wilfully disobeyed the order of the Sub-Collector, Bhubaneswar in not responding to his letter (Annexure-I) despite proper service of the said letter. According to the petitioner, the order (Annexure-4) is not in accordance with the provisions of Section 115 (1) of the Act and is in gross violation of the principles of natural justice and hence liable to be quashed.

4. In the counter filed by the opposite parties, it has been stated that the petitioner did not show cause in response to the notice issued to him by the Sub-Collector (vide Annexure-I) pointing out the irregularities committed by him. viz. misappropriation and mis-utilisation of Grama Panchayat fund, etc. According to the opposite parties, the Impugned order of suspension is in accordance with the provisions of Section 115(1) of the Act and is not in violation of the principles of natural justice and does not warrant any interference.

5. Mr. C. A. Rao. learned counsel appearing for the petitioner contended that the allegations levelled against the petitioner were not so grave as to invoke the provisions of Section 115 (1) of the Act, The second contention of Mr. Rao is that

the Sub-Collector has no jurisdiction to call for any explanation from the petitioner and that the Collector and District Magistrate, before passing the impugned order of suspension (Annexure-4) did not call for any explanation from the petitioner and passed the impugned order in gross violation of the principles of natural justice as also the provisions of Section 115(1) of the Act.

6. In support of his contention, learned counsel for the petitioner placed reliance on the decision reported in *Baikunthnath Mohanty v. State of Orissa* (1987) 2 Orissa LR 391 : AIR 1988 Ori 1150). In that case, reference has been made to an earlier decision i.e. *Tarini Tripathy Vs. Collector and Others*, wherein R.C. Patnaik, J. (as he then was) after analysing the provisions of Section 115(1) of the Act has pointed out the three essentials of that section as follows :

"(a) A report from the concerned Sub-Divisional Officer;

(b) satisfaction of the Collector on the basis of the report that circumstances exist to show that the Sarpanch or the Naib-Sarpanch has wilfully omitted or refused to carry out or violated the provisions of the Act, or the rules or order 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; and

(c) his further satisfaction that the further continuance of the elected representative in office would be detrimental to the interest of the Grama Panchayat or the inhabitants of the Grama,"

It has been further observed :

"All the three requirements are cumulative. Absent any one of them, that suspension is invalid. The Collector must form an opinion on both the counts enumerated in (b) and (c) above. Existence of one is not sufficient. Every delinquency or lapse might not satisfy the requirement of (c). Therefore, while bringing the tenure of an elected representative to an end either temporarily or prematurely, utmost care and circumspection ought to be exercised. Right of an elected representative to continue in office for the full tenure should not be lightly tinkered with by the Executive."

7. The learned counsel for the petitioner also referred to the decision reported in (1998) 2 Ori LR 348 (*Pradeep Kumar Karji v. Collector, Rayagada*), wherein the principles laid down in *Baikunthnath Mohanty's* case (*supra*) have been reiterated.

8. In order to satisfy ourselves, we had called upon the learned State counsel to produce the relevant record which was clone. On perusal of the records, we find that inspection report discloses a number of irregularities committed by the Sarpanch. Accordingly, the Sarpanch was asked to submit his explanation but he failed to do so. The sub-Divisional Officer submitted a report to the Collector pointing out the irregularities committed by the Sarpanch. The report of the Sub-Collector was considered by the Collector who on consideration of the charges was of the opinion that :

".....Sri Sukanta Bhoi, Sarpanch. Satyabhamapur has violated the provisions under G.C.P. Act, 1964 and Rules and abuses the powers, rights and privileges vested on him and his activities is prejudicial to the interest of the inhabitants of Grama Panchayat and his further continuance as Sarpanch in office would be detrimental to the interest of the G. P.

Hence, I, Sri Sarbeswar Mohanly, I.A.S. Collector, Khurda do hereby place Sri Sukanta Bhoi under suspension with immediate effect u/s 115 (I) of the Orissa Grama Panchayat Manual 1994....."

9, At this stage, we may again refer to the decision rendered in Baikunthannath Mohanty Vs. State of Orissa and Others, . Paragraphs 8 and 10 of the said judgment read thus ;

"8.....It will be seen that the legislature in its wisdom has used the word "wilful" in Section 115(1). The Collector must not only be of the opinion that the Sarpanch or the Naib-Sarpanch as the case may be, has omitted or refused to carry out or violated the provisions of the Act, the Rules or the Orders made thereunder and abused and acted in a manner prejudicial to the interest of the Inhabitants of the Grama Panchayat of the Grama, but he should also be of opinion that the Sarpanch omitted, refused or violated and abused, as the case may be, "wilful". A mere violations, omission, refusal or abuse is not enough. Omission, refusal, violation or abuse must also be wilful. The adverb "wilful" governs and qualifies the conduct of the Sarpanch, namely, that he wilfully omitted, refused, violated the provisions of the Act or the Rules or wilfully abused the rights, and privileges vested in him or wilfully acted in a manner prejudicial to the interest of the inhabitants of the Grama Panchayat or the Grama. Unless it is found that he did so wilfully the provision would not be attracted. The legislature has not empowered the Collector to take action if the Sarpanch or the Naib-Sarpanch merely omits or refuses to carry out or violates the provisions of the Rules, the Act and the orders or abuses the rights and privileges vested in him or acts in a manner prejudicial to the interest of the Grama Panchayat unless he so does wilfully. The object and purpose appear to be clear."

"10. It, therefore, follows from an analysis of the provisions contained in sub-sec. (1) of Section 115 that the three essentials as indicated in Tarini Tripathy's case must not only be present, but the Collector should also be satisfied that the alleged delinquency is "wilful", that is to say, the infraction by way of acts or omissions was wilful and not accidental, or negligent or involuntary but intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom. This valuable safeguard was built into the provision by way of a check on the powers of the executive to dethrone an elected representative of the people from the august office. A sarpanch may have failed to carry out the provisions of the acts, or the rules, may have violated them, certain of his acts may appear to be abuse of the powers, certain acts may appear to be detrimental to the Grama, but if such act, omission or

exercise of power is not wilful, that is to say, deliberate, calculated, intentional and conscious, the Sarpanch does not lose his throne on which he is seated by the people."

10. It is no doubt true that in the ease at hand, the Collector has considered the various charges against the Sarpanch, However, he has not recorded any finding nor has he come to the conclusion that the alleged delinquency was "wilful". Therefore, In the absence of any finding that the infraction or delinquency was "wilful", the mere use of that word in the suspension order cannot come to the aid of the opposite parties as the suspension order, in fact, merely repeats the requirement of Sub-section (i) of Section 115 of the Act. Thus, in view of the dictum in *Baikunthannath Mohanty Vs. State of Orissa and Others*, and *Tarini Tripathy's ease (supra)*, the impugned order of suspension cannot be sustained and needs to be quashed on the ground that the Collector has failed to record any opinion that circumstances existed were to show that the petitioner's action or inaction with respect to the alleged delinquency was "wilful". We hold accordingly.

11. The order has also been assailed on the ground of denial of principles of natural justice inasmuch as the petitioner was not heard before his suspension. We, however, are not inclined to accept this submission for the simple reason that Sub-section (1) of Section 115 of the Act does not contemplate any hearing before suspension. However, the State Government while exercising power under Sub-section (2) is obliged to give the Sarpanch or the Naib-Sarpanch, as the case may be, a reasonable opportunity of showing cause before removing him from office. Thus, the order of suspension is in the nature of interim order whereby the sarpanch or the Naib-Sarpanch is for the period of suspension restrained from continuing to function as the Sarpanch or Naib-Sarpanch, as the case may be. He, however, does not cease to be a Sarpanch or the Naib-Sarpanch merely because he is suspended. It is only after the order of removal is passed that he ceases to be so and therefore, in its wisdom, the legislature itself provided for an opportunity of hearing to be given to the person concerned. The fact that Sub-section (2) provides for an opportunity of hearing itself contemplates an enquiry before an order of removal can be passed. In other words, though an opportunity of hearing is not contemplated while passing an order of suspension under Sub-section (1) of Section: 115 of the Act, an opportunity of hearing is mandatory before an order of removal under Sub-section (2) of the said section can be passed. Therefore, the contention of the learned counsel for the petitioner that order of suspension is bad in law as no opportunity of hearing was given to the petitioner before the impugned order was passed, can-not be accepted.

12. In view of the finding arrived at in paragraph-10 above, the writ petition is allowed and accordingly the order of suspension vide Annexure-4 is quashed. But, in the circumstances, there shall be no order as to costs.

P.K. Patra, J.

13. I agree.