
(2020) 03 OHC CK 0003
In the Orissa High Court
Case No : Writ petition (C) No.5178 Of 2020

Sunita Naik

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 05-03-2020

Acts Referred:

Odisha Grama Panchayat Act, 1964 — Section — Section 19, 115(1), 15(2)

Citation : (2020) 03 OHC CK 0003

Hon'ble Judges : D.Dash, J

Bench : Single Bench

Advocate : B. Sahoo, B. Mohanty

Final Decision : Allowed

Judgement

D.Dash, J

1. The petitioner, by filing this writ application, has prayed for quashment of an order dated 08.11.2019 of the Government in the Department of

Panchayati Raj and Drinking Water under Annexure-1 as to the suspension of the petitioner, who is the elected Sarpanch of Badbanga Grama

Panchayat under Lephripada Block in the district of Sundargarh.

By the said order, proceeding has been initiated against the petitioner for her removal from the office of Sarpanch for alleged wilful violation of the

provisions of section 19 of Odisha Grama Panchayat Act, 1964 (hereinafter called as "the OGP Act") and acting in a manner prejudicial to the

interest of the Grama as such her continuance in the office as detrimental to the interest of the inhabitants of the Grama Panchayat. In view of that,

the petitioner has been called upon to explain the charges with their factual settings as annexed to the said order within thirty days of receipt of the

same as to why action as deemed proper under sub-section 1 of section 115 of the O.G.P. Act shall not be taken against her. The charge against the

petitioner is that she and the Ex-Panchayat Extension Officer of the Grama Panchayat are withdrawing funds from the Central Finance Commission

(CFC) account of Grama Panchayat and both in connivance with each other have drawn Rs.65,000/- showing that as advance in the cash book for

the project of construction of drain which is not there in the Grama Panchayat Development Plan (GPDP) for the year. It is said that the PEO having

been relieved has not handed over the charges to the new PEO and that is under the connivance of this petitioner.

While issuing the notice for the purpose of exercising the power under sub-section 1 of section 115 of the OGP Act, the petitioner, who is the elected

Sarpanch of Badbanga Grama Panchayat has been placed under suspension in exercise of power under sub-section 2 of section 115 of the O.G.P.

Act. This order of suspension is specifically under challenge in this writ application.

2. Brief facts necessary for the purpose are as under:-

The petitioner being the elected Sarpanch of Badbanga Grama Panchayat had been in the office and discharging her duty as such since her

assumption of the charge of the office after election.

The petitioner, having received the above letter under Annexure-1, submitted her explanation on 15.11.2019. It is stated that she has not signed the

cheques for withdrawal of Rs.65,000/- and her signatures have been forged and it is that Ex-PEO, who has done all these acts.

3. The opposite party nos. 3&5 in the counter have stated that upon an enquiry made by the Sub-Collector, Sadar, Sundargarh has given the report

that the amount in two phases i.e., Rs.25,000/- and Rs.40,000/- have been withdrawn by two cheques jointly signed by the petitioner and that Ex-PEO

and accordingly, the report having been submitted to the Collector, Sundargarh under Annexure-A, the Collector having reported the matter, the

petitioner has been rightly put under suspension in exercise of the power under sub-section-2 of section 155 of the Gram Panchayat Act pending

enquiry for action under sub-section-1 of section 115 of the G.P. Act.

4. Placing the order under Annexure-1, learned counsel for the petitioner submits that the action as to the suspension of the petitioner, the elected

Sarpanch of the Badbanga Grama Panchayat, in exercise of power under sub-section 2 of Section 115 of the Act as has been taken, is not sustainable

in the eye of law. It is submitted that no such reason has at all been given in the order as to the immediate need of suspension of the petitioner pending

the proceeding for her removal from the office and the statements in a general manner that the petitioner has wilfully violated the provisions of section

19 of the O.G.P. Act and acted in a manner prejudicial to the interest of the Grama are not enough to support and say that it has been done in

consonance with the law as embodied in sub-section 2 of section 115 of the Act in its letter and spirit. He submitted that the order of suspension is

vague and has been so perused without arriving at a satisfaction as to the pre-requisite requirements as mandated in law. He submitted that the

charge is vague and the order of suspension is motivated only with a view to oust the elected Sarpanch i.e. the petitioner. He further submitted that

the order of suspension is the outcome of total non- application of mind and that too on the assertion of the petitioner that her signatures have been

forged.

5. Learned Additional Standing counsel submits all in favour of the suspension of the petitioner as at Annexure-1. It is his submission that pending

enquiry into the allegations for taking action under sub-section 1 of section 115 of the O.G.P. Act, the Government having exercised the power under

sub-section 2 of said section, there remains very limited scope for the court to interfere with the same. He further submits that the conduct of the

petitioner in allowing the siphoning of the funds of the Grama Panchayat certainly amounts to wilful violation of provisions of section 19 of the O.G.P.

Act and the inaction on the part of the petitioner in preventing the Ex-PEO right from the time he was relieved to function as such there in the Grama

Panchayat keeping the cash book and other documents in his custody as said by the petitioner and her silence on that is prejudicial to the interest of

Grama. It is thus submitted that the order of suspension as under Annexure-1 is not liable to be interfered with in exercise of extra ordinary writ

jurisdiction pending the proceeding against the petitioner for her removal from the office.

6. Before going to address the rival submission, first of all, it is profitable to take note of the provision of section 115 of the O.G.P. Act which governs

the field. It reads as under:-

115. Suspension and removal of Sarpanch, Naib- Sarpanch and member:-

(1) If the State Government, on the basis of a report of the Collector or the Project Director, District Rural Development Agency, or suo motu are 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, they may after giving the person concerned a reasonable opportunity of showing cause,

remove him from the office of Sarpanch or Naib-Sarpanch, as the case may be;

(2) The State Government may, pending initiation of the proceeding on the basis of their opinion under Sub- section (1), by order, for reasons to be

recorded in writing, suspend the Sarpanch or Naib-Sarpanch, as the case may be, from the office;

(3) The State Government, at any time during the pendency of proceeding under Sub-section (1), revoke the order of suspension of a Sarpanch or

Naib-Sarpanch passed under Sub-section (2);

(4) A Sarpanch or Naib-Sarpanch on removal from office under Subsection (1) shall also cease to be a member of the Grama Panchayat, and such

person shall not be eligible for election as member for a period not exceeding four years as the State Government may specify;

(5) The provisions of this section shall, so far as may be, apply in respect of any member of the Grama Panchayat not being a Sarpanch or Naib-

Sarpanch ; provided that no such member shall be liable to be placed under suspension under the said provisions;

(6) (a) Whenever the Collector is of the opinion that the Sarpanch of a Grama Panchayat has failed in convening any meeting of the Grama

Panchayat within a period of three continuous months he may, after making such enquiry as he deems fit, by order, remove the Sarpanch from Office

and may also declare him not to be eligible for election as member for a period not exceeding one year as he may specify in his order, and on such

order being made the Sarpanch shall cease to be a member of the Grama

Panchayat.

(b) Nothing contained in the preceding sub-sections shall apply in respect of a default as specified above.â??

7. The scheme of section 115 of the OGP Act shows that the State Government on the basis of a report of the Collector or Project Director, District

Rural Development Agencies or suo-moto when is of the opinion that the circumstances exist to show that the Sarpanch or Naib Sarpanch of a Gram

Panchayat has wilfully omitted or refused to carry out or violated the provision of the Act or rules or orders made thereunder or acted in a manner

prejudicial to Grama and that further continuance of such person in office would be detrimental to the interest of the inhabitants of the Grama, said

person can be removed from the office of Sarpanch or Naib Sarpanch as the case may be, after giving a reasonable opportunity of showing cause in

having his say in the matter.

Sub-section 2 of section 115 of the OGP Act empowers the State Government on the basis of an opinion as stated above, to put said Sarpanch under

suspension pending initiation of the proceeding by an order, recording the reasons to that effect in writing.

8. It has been held in case of Tarini Tripathy Vrs. Collector, Koraput & Others; 62 (1986) CLT 548, that suspension of an elected representative is

indeed a drastic action and should not be taken recourse to cursorily and in a mechanical manner. Therefore, in order to exercise the power of

suspension of an elected representative, the legislature has provided the safeguards against arbitrary exercise as indicated in section 115 of the OGP

Act.

All the three requirements as stated in sub-section (1) of section 115 of the OGP Act are cumulative. Absence of any one of three would vitiate the

suspension. The opinion on both the counts i.e. (i) the satisfaction as to the wilful omission or refusal to carry out or violation of the provisions of the

Act or the rules and regulations made thereunder or exercise of powers, rights and privileges so vested or action in a manner prejudicial to the Grama

Panchayat; and (ii) satisfaction that further continuance in office would be detrimental to the interest of the inhabitants of the Grama are required to

be formed. Existence of only one is not sufficient for the purpose.

It has been said further that while thus bringing the tenure of an elected

representative to an end either temporary or prematurely, utmost care and circumspection ought to be exercised the right of an elected representative to continue in office for full tenure should not be lightly tinkered with.

In case of Ch. Srinivas Vrs. State; 1987(II) OLR 407, the decision of the Apex Court in case of Barjum Chemical Ltd. & Another Vrs. Company

Law Board & Others; AIR 1967 SC 295 having been referred to; it has been said that since existence of circumstances is a condition fundamental on

the making of an opinion, the existence of the circumstances, if questioned, has to be proved at least prima facie. It is not sufficient to assert that the

circumstances exist giving no clue to what they are because the circumstances must be such as to lead to conclusions of certain definiteness.

At this stage, it is felt apposite to place the order dated 08.11.2019 under Annexure-1:-

Government of Odisha, Panchayati Raj & Drinking Water Department

ORDER

No. 20358 / PR & DW, Dtd. 08.11.2019

PR-PADM-ESTT-0025-2019

Whereas, it appears from the report of the Collector, Sundargarh that Smt. Sunita Nayak, Sarpanch of Badbanga Grama Panchayat under Lephripada

Block has wilfully violated the provisions of Rule-1 (annexure) Rule of Business of OGP Rules 2014 and wilfully violated the provisions under Section

19 of Odisha Grama Panchayat Act, 1964 (Odisha Act, 1 of 1965) and acted in a manner which are prejudicial to the interest of the Grama and as

such her further continuance as Sarpanch of Badbanga Grama Panchayat is detrimental to the interest of the inhabitants of the said Grama

Panchayat.

Now, therefore, exercise of the powers conferred by Sub-section(2) of Section 115 of the said Act, Government have been pleased to place Smt.

Sunita Nayak, Sarpanch of Badbanga Grama Panchayat under suspension with immediate effect.

Further, in pursuance of Sub-section-(1) of Section 115 of the said Act, Smt. Sunita Nayak, Sarpanch of Badbanga Grama Panchayat is hereby called

upon to explain on the charges annexed to this order at ANNEXURE-A within 30 days from the date of receipt of this order as to why action as

deemed proper shall not be taken against her in accordance with law.

If no explanation is received from her within the stipulated period, it will be presumed that she has nothing to explain and the matter will be decided *ex parte*.

She may also state, if she desires to be heard in person.

By order of the Governor

Sd/-

Addl. Secretary to Government.â??

A plain reading being given to the above order, it appears that based on the report that the petitioner has wilfully violated the provision of section 19 of

the OGP Act, it is said that the petitioner has violated the provision of section 19 of the OGP Act and her acting in a manner which is prejudicial to the

interest of the Grama and as such her further contention as Sarpanch of Badbanga Grama Panchayat is detrimental to the interest of the inhabitants of

the said Grama Panchayat. But, there is no such note as to any such opinion to have been formed based upon the said report as to the existence of

circumstances in the direction of wilful violation of the provision of section 19 of the Act and the action in a manner prejudicial to the interest of the

Grama in saying that the continuation of the petitioner as the Sarpanch is detrimental to the interest of the inhabitants of the Grama Panchayat.

Furthermore, no reason has also been assigned. Therefore, the order of suspension of the petitioner who is the Sarpanch of Badbanga Gram

Panchayat as under Annexure-1 cannot be sustained in the eye of law.

9. In the result, the order of suspension dated 08.11.2019 passed by the Government under Annexure -5 is hereby quashed and it is directed that the

petitioner-Sarpanch be given the charge of all the relevant papers of Badbanga Gram Panchayat forthwith. The writ application is accordingly,

allowed. No order as to costs.

It is, however, clarified that this order will have no impact on the proceeding against the petitioner which is running for action under sub-section-1 of

section-115 of the G.P. Act, which would proceed for its culmination in accordance with law.