

(1965) 08 OHC CK 0003

In the Orissa High Court

Case No : Original Jurisdiction Case No. 108 of 1964

Surendranath Panda

APPELLANT

Vs

The State of Orissa and Others

RESPONDENT

Date of Decision : 24-08-1965

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 110
Electricity Act, 1910 — Section 4(1)(30)
Madhya Bharat Municipalities Act, 1954 — Section 208
Orissa Grama Panchayat Act, 1964 — Section 10, 10(1), 10(9), 114, 114(1)
Orissa Grama Panchayat Rules, 1994 — Rule 23 , 24, 25, 27, 29

Citation : (1966) 32 CLT 272

Hon'ble Judges : Ahmad, C.J.;Das, J

Bench : Division Bench

Advocate : B.B. Ray and B.B. Mohanty, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

Das, J.—The Petitioner Surendranath Panda has challenged the validity of the Notification No. 6609-XXV, 15763 G.P. dated 6th April 1964 of the Government of Orissa removing him from the office of the Sarpanch, Asureswar Grama Panchayat, in exercise of the powers conferred by Clause (b) of Rule 35 of the Orissa Grama Panchayat Rules, 194, and of another notification No. 6614-XXXV-16763 G.P. of the same date disqualifying him from holding the said office for a period of three years under Rule 38 of the said Rules.

2. The Petitioner was elected as the Sarpanch of Asureswar Grama Panchayat in the district of Cuttack. On 5-11-1963 he was served a notice to show cause in respect of the following charges made against him.

(1) He (the Petitioner) neither deposited the sale proceeds of nucleus paddy Dhanicha manure in the Grama Panchayat fund nor produced the same before the auditor for verification.

(2) The advanced amounts for execution of Development works without approval of the Grama Panchayat and without plan and estimate.

(3) He took advance of Rs. 800.00 and Rs. 1500.00 on 17-3-1963 and 20-5-1962 for construction of Katikath Tyndukura Road although the work was taken by him in personal custody no records were maintained by him.

(4) He took Rs. 850.00 for supply of paddy, but supplied paddy worth Rs. 750.00 and loaned out the paddy without approval of the Grama Panchayat and took no steps for its recovery.

(5) He spent Rs. 100.00 for purchase of gunny bags and conveyance charges, but no vouchers were produced by him in support of the said expenditure.

(6) He took Rs. 100.00 for taking possession of Luna Ferry ghat and no vouchers were produced in support of the expenditure.

(7) He spent Rs. 139.50 for a feast on the Republic day without approval of the Grama Panchayat.

(8) He mismanaged the ferry-ghat for which the Grama Panchayat sustained a heavy loss.

(9) He did not manage the pisci-culture tanks properly and the Grama Panchayat sustained loss due to his negligence.

(10) He was keeping cash in hand in excess in contravention of the Grama Panchayat Rule, 139.

(11) He took no steps for realisation of the due of the Grama Panchayat, hence heavy dues are outstanding.

3. The Petitioner gave answer to these charges and stated that the charges were frivolous in nature and prayed to be heard in person and to produce some papers in support of his plea. It is the case of the Petitioner that the authorities without considering the explanation submitted by him and without affording him an opportunity to be heard, by their notification No. 6609-XXXV-15763 G.P. dated 6th April, 1964, directed his removal from the aforesaid office under Rule 35(b), and debarred him from holding the said office for a period of three years by Notification No. 6614-XXXV-16763 G.P. of the same date. It is the validity of these notifications which is now under challenge.

4. This petition was heard analogously with O.J.C. Nos. 109, 110 and 144 of 1964 which have been disposed of by separate judgments. Mr. Mohanty, learned Counsel for the; Petitioner in this case, raised the following contentions:

(i) Rule 38 is ultra vires the rule-making-power inasmuch as it has made provision for debarring a Sarpanch removed under Rule 35(b) from being eligible to the said office for a period not exceeding three years, as such power has not been given to the State Government by the Act itself.

(ii) Rule 35(b) is ultra vires the rule-making-power as it is not in conformity with the powers conferred u/s 16(2) of the Act which authorises the Government to make rules for removal.

(iii) The State Government has acted in excess of its powers conferred by Rule 35(b) and in any event Rule 35(b) has no application to the facts of the present case and therefore the orders passed in purported exercise of the powers under Rule 35(b) must be set aside.

(iv) The powers conferred under Rule 35 are quasi-judicial powers and as such a personal hearing was incumbent and there being a failure to give personal hearing to the Petitioner, the whole order is vitiated.

(v) Section 16(2) of the Orissa Grama Panchayat Act itself is ultra vires being in excess of the legislative competency.

5. I shall now proceed to examine the correctness of these contentions raised on behalf of the Petitioner. It is urged that Rule 38 is ultra vires the rule-making-power as by debarring a Sarpanch removed under Rule 35(b) of the Orissa Grama Panchayat Rules (hereinafter referred to as "the Rules") from being eligible to the said office for a period not exceeding three years, the rule-making-authority have imposed an additional disqualification for a period which has not been contemplated within the purview of the Grama Panchayat Act (hereinafter referred to as "the Act").

6. It was next contended that Rule 35(b) is ultra vires the rule-making-power as it is not in conformity with the powers conferred on the Government u/s 16(2) of the Act authorising them to make rules regarding the grounds on which a Sarpanch may be removed. As both the contentions are interlinked I shall now proceed to deal with both of them together. Rule 38 runs as follows:

Any person removed from the office of the Sarpanch or Naib Sarpanch under Sub-rule (b) of Rule 35, Panch or President of an Adalti Panchayat under Sub-rule (b) of Rule 37 and a member of the Grama Panchayat removed under Sub-rule (b) of Rule 38-A shall not be eligible to any of the said offices for a period not exceeding three years as may be specified by the Government.

There is no dispute over the proposition that the rules made under any Act cannot override the provisions of the Act itself from which the power is derived and a rule-making-body cannot frame rules in conflict with or derogatory to the substantive provisions of the Act under which the rules are framed so as to change the policy of the Act. Rules are made by a Subordinate authority and that authority cannot travel beyond the limits of the provisions of the Statute or assume more powers than given under the Act itself. It was urged that the only disqualification provided under the Statute are those contained in Sections 9 and 10 of the Act and since Rule 38 has added a new disqualification unknown to the Act, it must be struck down as ultra vires.

7. Under the scheme of the Act personal "qualification" or "disqualification"

operate at three stages viz., (i) at the time of preparation of the electoral roll of the Grama Sasan ; (ii) for being chosen as a member of the Grama Panchayat and (iii) election to the office of the Sarpanch. u/s 5 of the Act, the State Government may, by notification, constitute a Grama Sasan consisting of one or a group of villages. After the establishment of a Grama Sasan, a register of adult population has to be prepared u/s 9. It is at this preliminary stage of the preparation of the register of adults, some disqualifications have been imposed. Section 9 specifies the class of persons who shall be disqualified for such registration, such as a person of unsound mind, or (b) an undischarged insolvent, or (c) a person suffering from leprosy, tuberculosis, or (d) a person convicted of an election offence under any law for the time being in force, or (e) a person who has been sentenced to imprisonment for a term exceeding a specified period for an offence involving moral turpitude or ordered to give security for good behaviour u/s 110, - Code of Criminal Procedure or (f) a person who is not a citizen of India.

8. The next stage is that the Grama Sasan established u/s 9 shall elect the Grama Panchayat or the executive committee of the Grama Sasan from amongst its members u/s 10(1). At this stage, the Act has imposed some additional disqualification u/s 10(9) and a person who has incurred such disqualification shall not be eligible to stand for election to be a member of the Grama Panchayat. Section 10(9) enumerates the following disqualifications for such membership. The relevant portions of Section 10(9) runs thus:

A person shall not be eligible to stand for election as, or continue to be, a member of the Grama Panchayat or a Panch of an Adalti Panchayati constituted under this Act, if

- (a) his name is not in the register of adults ordinarily resident in the ward of the Grama Sasan from which he intends to seek election or has been elected,
- (b) he has incurred any of the disqualifications u/s 9 of the Act,
- (c) he holds any office of profit under the State or the Central Government or a Local authority other than that of a Sarpanch, Naib-Sarpanch or Member of Grama Panchayat or President or Panch of an Adalti Panchayati,
- (d) he has been dismissed from service of the State Government, Central Government or a Local authority,
- (e) he has been in arrears of any tax, fee or rate due by him to the Grama Sasan for a continuous period of two years, or
- (f) he is in the habit of encouraging litigation in the village and has been declared to be so on enquiry by the prescribed authority in the prescribed manner.

9. It has also provided that the aforesaid disqualification in (d) and (e) may be removed or cease to have any effect under circumstances enumerated in the provision therein. The next and the third stage is the election of the Sarpanch

from amongst the members of the Grama Panchayat. At this stage, nothing has been said in the Act regarding the qualification or the disqualification of a Sarpanch as such Section 16(2), however, authorises the State Government to make rules regarding the qualification of a Sarpanch or a Naib Sarpanch and also the grounds on which they may be removed. It runs thus:

16(2). The State Government shall, subject to the restrictions provided in Sub-section (1) of Section 9, make rules regarding the qualifications of a Sarpanch and a Naib-Sarpanch and the grounds on which they may be removed from office for negligence, inefficiency or misbehaviour.

It is thus manifest that this section expressly empowers the State Government to frame rules regarding the qualification of a Sarpanch and also in regard to the grounds on which he may be removed from office, the grounds being confined to cases of negligence, inefficiency or misbehaviour. With regard to the first part of Section 16(2) viz., framing of rules regarding the qualification, Rule 34 has provided that a candidate for election as a Sarpanch (a) shall be able to read and write Oriya or any language spoken by the majority of the local area as may be decided by the District Magistrate and (b) he shall not be less than 25 years. In respect of the second part of Section 16(2) the State Government has framed Rule 35 and prescribed the grounds on which a Sarpanch may be removed. As seen from the provisions of Section 16(2) the only restriction put on the exercise of such rule-making power is that the qualification to be prescribed for Sarpanches shall be subject to the restrictions contained in Section 9(1) and not violative of the same. Similarly while making rules for removal, the grounds should be confined to cases of negligence, inefficiency or misbehaviour.

10. As seen from the provisions laid down in the second part of Section 16(2) it relates to the removal of a Sarpanch on certain grounds. The concept and connotation of removal of a member is something distinct from the imposition of a disqualification, though no doubt in its actual application, they may, in some cases, overlap each other. It was urged that when the first part relates specifically to qualifications the second part would reasonably be construed as referring to "disqualifications" even though the actual word used is "removal". It is, however, a well-known canon of construction that words in a statute are correctly and strictly used (See Craie on Statute Law, page 159, 6th Edn.) and the Legislature should be assumed to have used the clearest language (Craie on Statutes, page 92). It must, therefore, be held that the expression "removal" has not been used in the sense of any "disqualification" as used in Section 16(2) of the Act. While Rule 35(b) prescribes the grounds of removal, Rule 38 makes a further provision that after such removal, the Government shall debar a Sarpanch from holding the office for a period not exceeding three years. Rule 35(b) and Rule 38 have to be read together. Rule 38 comes into play as an effect or consequence of the order passed under Rule 35(b). The next question is whether such a power of debarring a member for three years after his removal under Rule 35(b) flows from the powers given u/s 16(2) of the Act or from any

other provision in the Act.

11. Apart from Section 16(2), Section 114 of the Act confers very wide powers on the State Government to make rules to carry out the purposes of the Act. It runs thus:

Section 114(1). The Provincial Government may, subject to the condition of previous publication by notification, make rules to carry out the purposes of this Act.

Sub-section (2) enumerates a large number of subjects, particularly in respect of which rules also could be framed without prejudice to the general powers given u/s 114(1) of the Act. Here again under Sub-clause (ii) of Section 114(2) power to make rules regarding the qualification of a Sarpanch has been specifically given. Thus, the State Government has derived authority not only from Section 16(2), but also from the powers given u/s 114(1) and (2) to make rules regarding the qualification of a Sarpanch. Similarly apart from Section 16(2), the Government has, under the general powers vested in u/s 114(1). power to make rules for removal as also for the consequential order that may follow such removal. Rules 23 to 38(b) were framed under the rule-making power given under the Act. No doubt, these rules were placed under the heading: "qualification of Sarpanch, Naib-Sarpanch and Panches". But the provision of Rule 38 has in clear and unambiguous terms said that a Sarpanch removed under Rule 35(b) shall not be eligible to the said office for a period not exceeding three years.

12. It is well-settled by authorities that the head-lines or marginal notes cannot control the meaning of the body of the section if the language employed therein is clear and unambiguous. If the language of the section is clear, then it may be that there is an accidental slip in the marginal note rather, than that the marginal note is correct and the accidental slip is in the body of the section itself. (See *Nalinakhya v. Shyamsundar* AIR 1953 S.C. 143 , and *The Western India Theatres Ltd. Vs. Municipal Corporation of The City of Poona*, .

13. It is necessary at this stage to refer to Sub-sections (3) and (4) of Section 114 of the Act which require that rules made u/s 114 shall be placed before the Legislative Assembly and after final publication will have the effect as if they formed part of the Act. Sub-sections (3) and (4) run as follows:

(3) All rules made under this section shall be laid as soon as possible after they are made before the Orissa, Legislative Assembly for a total period of fourteen days which may be comprised in one session or in two or more sessions, and shall be subject to such modifications as the Assembly may make during the said period.

(4) All rules so made under this section shall, on final publication, have effect as if enacted in this Act.

14. It is not disputed that the rules were placed before the Orissa Legislative Assembly. The Court is entitled to presume that official acts were being

performed in their regular course. *Brojendra Kumar Saha Vs. Union of India (UOI)*, . Once the rules including Rules 35 and 38 were placed before the Assembly and were published, they must be regarded as having been incorporated in the Act itself. No further question can therefore arise that the very rules are ultra vires the Act (See Maxwell on Interpretation of Statutes, 11th Edition, page 49 where the learned author has referred to *Wicks v. D.P.P.L.R. (1947) A.C. 362* approving *Willingdale v. Norris L.R. (1909) I.K.B. 57*, and *Institute of Patent Agents v. Lockwood L.R. (1894) A.C. 347*. The law laid down there was that when an instrument made under an Act which prescribes that they shall be laid before Parliament for a prescribed number of days during which period they may be annulled but if that is not so annulled they are to be of the same effect as if contained in the Act and must be treated for all purposes as if they were in the Act. In view of this legal position the contention that Rule 35(b) and Rule 38 are ultra vires the Act must be rejected. Both the rules must be read as if they formed part of the Act.

15. It was next contended that assuming Rule 35(b) is held to be valid, its provisions are not attracted so far as the facts of this case are concerned. The argument is that before a Sarpanch could be removed, it must be established on facts that he did not comply with the provisions of Rule 35(b). The relevant portion of Rule 35 may be quoted here:

35. The Provincial Government may, by notification remove any Sarpanch or Naib-Sarpanch.

(a)... ..

(b) If he in their opinion, wilfully omits or refuses to carry out or disobeys the provisions of the Act or any rule, bye-law, regulation or lawful orders issued thereunder or abuses the powers vested in him.

16. It was urged that in order to attract the provisions of Rule 35(b) mere omission or refusal to carry out the provisions of the Act or any rules is not enough. It must also be shown that it was wilful and in the absence of any evidence of an intentional or deliberate omission or refusal the Sarpanch cannot be removed from his office, and such removal must be held to be mala fide. Whether a particular act is wilful or not depends upon the facts of each case. It is difficult to establish by any direct evidence whether a particular act was wilfully done. It has to be inferred from circumstances. Nothing has been made out in this case to show that the acts of omission alleged against the Petitioner are mere acts of inadvertences. This after all, is a matter based on for investigation of fact and there is nothing on record to show that the Petitioner never acted wilfully within the meaning of Rule 35(b). Mr. Mohanty, in this connection relied upon a decision of the Privy Council in *Ardeshir Bhicaji Tamboli v. Agent, G.I.P. Railway Company AIR 1928 P.C. 24*. In that case some bales of cotton were delivered to the Respondent railway for transport. The goods caught fire while lying on the platform. It was found on fact that there was not sufficient number

of hydrants and those that were available could not work properly for want of sufficient pressure. Their Lordships held that though it is a case of neglect, it was not a case of wilful neglect so as to make the railway company liable as per the risk-note. The facts of the case are clearly distinguishable. That part, whether a particular fact is wilful or not depends on the facts of each case, but the onus is on the person who asserts that it is not so to prove that it was not a "wilful act". *Sabitri Devi v. Madanlal Chopalia* ILR 1962 Cutt 195.

17. Next it was contended that the use of the language "in the opinion" in Rule 35(b) and the subject-matter to which it relates suggest that the "opinion" of the Government shall be subject to objective test and it is open to the Court to examine the facts and determine if the decision arrived at is a reasonable one.

The expression "in its opinion" as appearing in Rule 35(b) has found place in a number of Statutes and has been the subject of construction in a large number of decisions. The question is whether such an opinion is liable to the test of subjective satisfaction of the authority on whom the legislature has conferred the power to act or is liable to an objective test by Courts of law. The expression "in the opinion" finds place in Section 208 of the Madhya Bharat Municipality Act. An order superseding the Municipality was challenged in the Madhya Pradesh High Court in *Maursinha Vs. State of M.P.*, . Their Lordships held that "in the opinion" occurring in Section 208 is not to be purely a subjective test. In a similar case with regard to the removal of a "Municipal Councillor", the Allahabad High Court in *Purushottam Chandra Vs. State of Uttar Pradesh and Another*, , also held the same view. See also *The Commissioner of Income Tax Vs. Mcmillan and Co.*, . The Privy Council while construing the phrase "in its opinion" as appearing in Section 4(1)(30) of the Electricity Act (Act IX of 1910) which gives power to the Provincial Government to revoke a license if in its opinion the public interest so requires, in AIR 1949 136 (Privy Council) , held that there is nothing in the language of Section 4(1)(30) or in the subject-matter to which it relates upon which to found the suggestion that the opinion of the Government is to be subject to objective test. Their Lordships, however, held that, the objective test could be applied to find out if a law has been correctly construed and applied. It is urged by the learned Counsel for the Petitioner that when it is alleged that the executive authority had not exercised its powers bona fide for purposes contemplated by law and this Court should examine the facts of the case to determine if the opinion of the Government is well based on materials or it was made mala fide being influenced by extraneous considerations and he relied upon *S. Pratap Singh Vs. The State of Punjab*, , in support of his contention.

18. It is well-settled that the High Court in its Writ Jurisdiction cannot take upon itself the function of an appellate Court and scrutinise the materials that were available to the authorities and substitute its own discretion and judgment for that of theirs. See *Vice-Chancellor, Utkal University v. S.K. Ghosh* 20 C.L.T. 206 (S.C.). No doubt, when a statutory authority fails to observe the statutory procedure or where there is an abuse of process for collateral purposes, the Writ

Jurisdiction may be exercised to remedy the wrong and the Writ of Mandamus being of the most extensive remedial nature, may be issued Mayor of Westminster v. L. and N.W. Railway L.R. (1905) A.C. 426, there are authorities in support of interference in orders of Government, if such orders were based upon no evidence influenced by irrelevant considerations or conclusions which on their very face are so capricious that no reasonable man could have arrived at that conclusion on similar grounds State of Andhra Pradesh Vs. Sree Rama Rao, .

19. It was next urged that the grounds on which the Petitioner has been removed, do not relate to any of the duties of the Sarpanch, lawfully imposed by the Statutes or the Rules etc.. It is stated that the only duty which is lawfully imposed on the Sarpanch is provided in Section 21 of the Act. Under that section a large number of duties has been assigned to the Grama Panchayat in relation to the control and administration of its area subject to such exceptions as the Government may by special or general order direct. The executive authority for the purpose of carrying out the provisions of the Act is the Sarpanch provided as u/s 8, and the Sarpanch, as provided u/s 17, shall in the execution of his duties, give effect to the decision of the Grama Panchayat unless of course when in his opinion, the decision of the Grama Panchayat is subversive of public order in which event he has to report the matter to the Sub-divisional Magistrate and act according to his instructions. In connection with the village administration, a number of duties have been entrusted to the Grama Panchayat under various provisions of the Act and the Rules and instructions have also been issued by the Government in connection with the performance of such duties. The Sarpanch as the executive head of the Grama Panchayat, has to perform those duties and any disobedience or refusal to perform such duties, may make the Sarpanch liable to removal under Rule 35(b). Suffice it to say for the present that the duties of the Grama Panchayat vis-a-vis the Sarpanch in relation to the village administration cover a wide range of activities as envisaged by the Act and the Rules.

20. Before I proceed to examine the charges, I will deal with the last contention of Mr. Mohanti that Section 16(2) of the Act is ultra vires. The argument is that the power of removal of an elected representative of the people by an executive order as envisaged under the above section is derogatory to democratic principles on which the village administration under the Grama Panchayat Act has been based. It is argued that several acts relating to the local-self-governing bodies such as the Bihar and Orissa Municipal Act, Sambalpur Local-self-Government Act and the Madras Local Boards Act do not make any provision for removal of an elected office-bearer by an executive order. The reason for retention of such power in the present Act, however, is quite obvious. The Panchayat administration is still in its infancy and there is lack of proper education in the mass of villagers who are to run it. The qualification prescribed even for a Sarpanch is that he should be able to read and write Oriya or any language spoken by the majority of the people of the local area (Rule 34). In that context, the Legislature might have thought it necessary to retain such powers of removal in the hands of the executive Government. Moreover, the

exercise of such power is subject to various conditions such as wilful disobedience, neglect in carrying out the duties imposed on a Sarpanch. This, therefore, does not mean that an unfettered right of removal unknown to democratic principles, has been vested in the executive. Under the Orissa Grama Panchayat Act, the executive has been given some power of control and supervision over the Grama Panchayat, but those powers of control and supervision are only in relation to the administration of Grama Panchayats and functions of the Sarpanch See Raja Bahadur K.C. Deo Bhanj Vs. Raghunath Misra and Others, . Moreover in a number of other Acts, for instance the Orissa Municipal Act there is provision for removal of a councillor or the Chairman. Thus, Section 16(2) of the Act cannot be held to be ultra vires merely because it provides for removal of a Sarpanch by an order of the Government. This contention in the context is more or less academic and needs no elaborate discussion.

21. Coming to the facts of this case, it appears that originally number of charges were framed against the Petitioner, some of which were dropped and ultimately the Government removed the Petitioner on the basis of eleven charges as stated earlier. After the charges were framed, the Petitioner was called upon to submit his explanation which he duly submitted. It appears that the District Panchayat and Tribal Welfare Officer Cuttack, enquired into the charges in the presence of the Petitioner. The Petitioner admits that he was present during the enquiry of the District Panchayat and Tribal Welfare Officer, but, he contended that there was no enquiry into the charges levelled against him and at no point of time he was given any notice that the aforesaid officer was coming to enquire into the charges. The report of the enquiring officer, however, reveals that the enquiry was made in the presence of the Petitioner and he offered his explanation with reference to the charges. In paragraph 4 of the report it has been mentioned that with reference to the non-maintenance of the advance register, the Petitioner stated before the enquiring officer that there was a resolution of the Grama Panchayat authorising the Petitioner to make payments. Similarly in paragraph 5 with respect to the charge that the Sarpanch took some money from the Grama fund without consulting the members of the Grama Panchayat, the Petitioner stated before the enquiring officer that he took the money as advance and that he would recoup the amount when measurement was done. The assertions made in paragraphs 4 and 5 of the report of the enquiring officer where he stated that- the Petitioner was present at the time of his enquiry, have not been denied in the counter filed by the Petitioner. Thus, there are materials to support the position that the Petitioner was present at the time of enquiry and offered his explanation in respect of some of the items of the charge. The charges cover a number of items, such as non-deposit of the sale-proceeds of the nucleus of paddy, Dhanicha and manure, the non-production of the cash-in-hand before the auditor, which are clear violation of the statutory functions of the Sarpanch. It was further found against the Petitioner that he took away some money from the Grama fund for his personal necessity which undoubtedly is an

use of the power as envisaged in Rule 35(b). The Petitioner was also charged for having mismanaged the ferry-ghat, the pisci-culture tanks and he was found lending money without the approval of the Grama Panchayat without keeping any accounts for the same, though it is incumbent u/s 48 of the Act that the Grama Panchayat shall keep regular accounts for the receipts and the expenditure of the Grama fund which shall be audited annually or at prescribed intervals by the auditor appointed by the Director of the Grama Panchayats. It appears from the report of the enquiring officer that the charges were levelled against the Petitioner on the basis of the audit report. Though the Petitioner denied it, it has been asserted on behalf of the State that during the course of audit from 23-6-1963, to 26-6-1963, the Petitioner himself was present and noticed the objection slips issued by the auditor regarding production of some documents and vouchers. But he neither produced the vouchers or papers, nor did he request th Assistant Director of Grama Panchayat to postpone the audit. Thus, this is not a case where it can be said that there are absolutely no materials to support the charge or that the findings arrived at by the authorities were unreasonable or were based upon extraneous considerations of influence. The contention that no opportunity was given to the Petitioner for a personal hearing cannot also be accepted. That the charges are co-related to the duties and functions of the Sarpanch as enjoined upon him by the Act and the Rules cannot be doubted. No case has been made out for interference with the order of removal under Rule 35(b) and the consequential order passed under Rule 38 of the Rules.

The petition must, accordingly be dismissed, but in the circumstances of the case, there would be no order for costs.

Ahmad, C.J.

22. I agree.

Petition dismissed.