
(2002) 07 OHC CK 0070
In the Orissa High Court
Case No : O.J.C. No. 3389 of 2000

Suresh Chandra Dash

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 05-07-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa Grama Panchayat Act, 1964 — Section 133
Orissa Grama Panchayat Rules, 1968 — Rule 216

Citation : (2002) 94 CLT 321 : (2002) OLR 35 Supp

Hon'ble Judges : M. Papanna, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : K.B. Kar and B.K. Nayak, for the Appellant; D.K. Nanda, Additional Government Advocate for O.Ps. 1 to 4, for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—The petitioner was working as the Secretary of Bira Balabhadrapur Grama Panchayat. By a letter dated 11.10.1999, he was asked to show cause within seven days as to why disciplinary action will not be taken against him for misbehaving with the Sarapanch and the members of the Gram Panchayat. In the show cause notice, it was also alleged that the Gram Panchayat Office was not functioning properly, records of the Gram Panchayat Office are not available in the office and members were not informed with regard to the receipt of the grant-in-aid and non-availability of cash book for approval of income and expenditure. On 16.10.1999, the petitioner prayed for time to submit his show cause. On 25.10.1999, the Sarapanch of the Grama Panchayat passed an order dismissing the petitioner from the service. On 30.10.1999, the petitioner submitted his show cause reply. On an appeal filed by the petitioner, i.e., O.G.P. Appeal No. 40 of 1999, against the said order of dismissal dated 25.10.1999, the Sub-Collector, Puri by his order dated 4.1.2000 held :

"Under the above discussion I came to a conclusion that the reasonable

opportunity has not been given to the appellant. The respondent is advised to place the show cause submitted by the appellant before the G.P. meeting afresh for the perusal of members. After discussion in the G.P. meeting, Sarapanch may take a decision on the issue. Appeal petition is disposed of accordingly."

Thereafter, a communication was sent by the District Panchayat Officer, Puri on 13.3.2000 to the Block Development" Officer, Puri stating therein, inter alia, that the Grama Panchayat has resolved on 25.1.2000 to dismiss the petitioner considering his explanation as the work of the Grama Panchayat has suffered a lot due to non-functioning of the Grama Panchayat Secretary of Bira Balabhadrapur Grama Panchayat. Aggrieved, the petitioner has filed this writ petition.

2. Mr. K. B. Kar, learned Counsel for the petitioner submitted that the procedure as laid down in Rule 216 of the Orissa Grama Panchayats Rules, 1968 (in short, "the Rules") has not been followed while removing the petitioner from service inasmuch as no opportunity of hearing has been given to the petitioner. Mr. D. K. Nanda, learned Additional Government Advocate, on the other hand, submitted that the petitioner ought to have filed an appeal against the decision of the Grama Panchayat taken on 25.1.2000 to dismiss the petitioner and instead of availing the Statutory remedy by way of appeal u/s 133 of the Orissa Grama Panchayat Act, 1964, the petitioner has filed this writ petition under Article 226 of the Constitution against the order of removal. Despite notice, no one has appeared on behalf of Opp. parties 5 and 6.

3. Art alternative remedy by way of an appeal under the Statute is not a bar for the petitioner to move this Court under Article 226 of the Constitution. Even where an alternative remedy is available under the Statute, the High Court has jurisdiction to entertain a writ petition under Article 226 of the Constitution. But the High Court normally does not interfere with an impugned order against which a statutory remedy by way of appeal is available as a self-imposed limitation. In what cases the High Court should interfere and in what cases, the High Court should not interfere where alternative remedy is available by way of a statutory appeal against an order is a matter to be decided by the High Court in the facts and circumstances of each case.

4. The petitioner's only grievance in this writ petition is that he has not been given an opportunity of hearing by the Grama Panchayat although the provisions in Rule 216 of the Rules provides for such an opportunity to be given to him before any order of removal is passed. This contention can be decided by this Court on a bare perusal of the provisions of Rule 216 of the Rules and for this reason, we are not inclined to dismiss this writ petition at this stage after the writ petition has been pending before this Court for long two years only on the ground that an alternative remedy by way of appeal is available against the impugned order of removal. Rule 216(a) of the Rules is extracted hereunder :

"216(a). The Grama Panchayat may remove the Secretary of the Grama Sasan

from services if he wilfully omits or refuses to carry out the duties and functions entrusted to him under the provision of the Orissa Grama Panchayat Act, 1964 and the rules or orders made thereunder abuses the powers, rights and privileges vested in him or acts in a manner prejudicial to the interest of the Grama Sasan or by his action causes loss to the Grama Sasan or has been convicted or (any offence).

Provided that no order or removal shall be passed by the Grama Panchayat without giving him a reasonable opportunity of showing cause. The grounds on which he is proposed to be removed shall be reduced to the form of definite charges which shall be communicated to him in writing. He shall be required to submit his explanation in writing within a reasonable time,

The Grama Panchayat shall take a decision in the matter after having considered the explanation of the Secretary, if any, and having heard him, if he has so desired and thereafter (may) remove him."

5. From a bare perusal of the provision in Rule 216(a) of the Rules, it will be clear that the Grama Panchayat may remove the Secretary of a Grama Sasan from the service if he wilfully omits or refuses to carry out the duties and functions entrusted to him under the provisions of the Orissa Grama Panchayat Act, 1964 and the rules or orders made thereunder, abuses the powers, rights and privileges vested in him or acts in a manner prejudicial to the interest of the Grama Sasan or by his action causes loss to the Grama Sasan or has been convicted of any offence. But the proviso to Rule 216 makes it clear that no such order of removal shall be passed by the Grama Panchayat without giving him a reasonable opportunity of showing cause. The last limb of Rule 216(a) of the Rules further provides that the Grama Panchayat shall take a decision in the matter after having considered the explanation of the Secretary, if any, and having heard him, if he has so desired and thereafter may remove him.

6. In the present case, the petitioner submitted his explanation in response to the show cause notice on 30.10.1999 but by 25.10.1999, he had already removed from service initially. For this reason, the Sub-Collector, Puri by his appellate order dated 4.1.2000 held that reasonable opportunity had not been given to the petitioner and ordered that the show cause submitted by the petitioner be placed before the Grama Panchayat meeting afresh for perusal of the members and after discussion in the Grama Panchayat meeting, the Sarapanch may take a decision on the issue. Soon after receipt of the said order dated 4.1.2000, the Grama Panchayat appears to have decided in its meeting held on 25.1.2000 to dismiss the petitioner after considering his explanation. But from the annexures filed in the writ petition, it appears that the petitioner was not given an opportunity of being heard.

In our considered opinion, after receipt of the appellate order dated 4.1.2000 of the Sub-Collector, Puri the petitioner was required to be asked as to whether he wanted to be heard in the matter and in case, he desired to be heard, the Grama

Panchayat was required to hear the petitioner while considering the explanation of the petitioner and thereafter pass an order either retaining him in service or removing him from service. Since the petitioner has not been given an opportunity of hearing as provided under Rule 216(a) of the Rules, we hold that the dismissal/removal of the petitioner from the post of Grama Panchayat Secretary of Bira Balabhadrapur Grama Panchayat is not valid in law.

7. In the result, the order dated 13.3.2000 in Annexure-2 to the writ petition is quashed and the petitioner will be reinstated in . his service as Grama Panchayat Secretary of Bira Balabhadrapur Grama Panchayat forthwith. Considering the fact that no one has been appointed in place of the petitioner as Secretary of Bira Balabhadrapur Grama Panchayat and the Secretary of some other Grama Panchayat has been given charge as Secretary of Bira Balabhadrapur Grama Panchayat we further direct that the petitioner will be paid his salary and allowances from the date of his removal till his reinstatement. This order will be complied with by the Sarapanch of Bira Balabhadrapur Grama Panchayat-Opp. party No. 5 within one month from the date of receipt of a certified copy of this judgment from the petitioner. The writ petition is allowed.

Considering, however, the facts and circumstances of the case, the parties shall bear their own costs.

M. Papanna, J.

8. I agree.