

(1986) 09 OHC CK 0041

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1218 of 1986

Tarini Tripathy

APPELLANT

Vs

Collector and Others

RESPONDENT

Date of Decision : 16-09-1986

Acts Referred:

Orissa Grama Panchayat Act, 1964 — Section 115(1)

Citation : (1986) 62 CLT 548 : (1986) 2 OLR 497

Hon'ble Judges : R.C. Patnaik, J;D.P. Mohapatra, J

Bench : Division Bench

Advocate : J. Patnaik, B.K. Mohanty and A K. Bhagat, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.C. Patnaik, J.—This is an application by the Saroanch of Dahana Crampanchayat in the district of Koraput for the quashing of the order of suspension passed by the Collector, Koraput (opp. party No. 1) as per Annexure-7 passed u/s 115(1) of the Orissa Grama Panchayat Act.

2. The petitioner has alleged that he was elected as Sarpanch of Dahana Crampanchayat in January 1984. There was no dereliction of duty and he has been performing his duties efficiently. But at the behest of some political rivals, action has been taken against him u/s 115(1) of the Orissa Grama Panchayat Act (hereinafter referred as "the Act").

3. In the counter affidavit the opposite parties have justified the order of suspension alleging that serious irregularities and illegalities have been committed by the Sarpanch in the discharge of this function. Hence, action was taken against him u/s 115(1) of the Act on the report of the Sub-divisional Officer.

4. Suspension of an elected representative is indeed a drastic action and should not be taken recourse to cursorily and in a mechanical manner. Having vested

the powers with the Executive to suspend an elected representative, the Legislature provided safeguards against arbitrary exercise. Section 115(1) reads as under .

"115 Suspension and removal of Sarpanch, Naib-Sarpanch and member :-(1) If on the report of the Sub-divisional Officer the Collector is 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 provision 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 m Office would be detrimental to the interest of the Grama Panchayat or the inhabitants of the Grama, he may, by order suspend the Sarpanch or Naib-Sarpanch, as the case may be, from office and report the matter to the State Government....."

The section, therefore, postulates three requirements :

- (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 orders 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.

All the three requirements are cumulative. Absent any one of them, the 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.

5. Mr. J. Patnaik, the learned counsel for the petitioner, therefore, rightly argues that the order of suspension does not contain one of the valid requirements, namely, the opinion of the Collector that circumstances exist to show that the Sarpanch has wilfully omitted or refused to carry out or has violated the Act, the rules or the orders made thereunder and has abused the powers, rights ind privileges vested in him or has acted in a manner prejudicial to the interest of the Grama Panchayat or the Inhabitants of the Grama. It does not indicate if in the opinion of the Collector circumstances as required by Sub-section (1) of Section 115 existed to justify the suspension of the petitioner.

6. The learned Additional Standing Counsel placed before us the file in which the decision was taken. Nowhere in the file has the Collector recorded an opinion that circumstances existed to show that the petitioner wilfully omitted or refused to act etc. as per (b) above. We, therefore, hold that the order of suspension as per Annexure-7 is unsustainable in law and is invalid and the same is hereby quashed.

7. In the result, the writ application is allowed. In the circumstances, there would be no order as to costs.

D.P. Mohapatra, J.

I agree.