

(2000) 11 OHC CK 0019

In the Orissa High Court

Case No : Original Jurisdiction Case No. 5007 of 2000

Uma Charan Patnaik

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 14-11-2000

Acts Referred:

Orissa Municipal Act, 1950 — Section 400, 76

Citation : (2001) 1 OLR 15

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : J.N. Patnaik, A.K. Choudhury, J. Dash, K. Das and Bijan Ray, for the Appellant; N.K. Mishra, for Opp. parties 3 and 4, for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—The petitioner in this writ application has challenged the legality of the office order No. 16273 dated 20th May, 2000 issued by the Under-Secretary to Government of Orissa in Housing and Urban Development Department for placing the petitioner under suspension as well as the order of suspension dated 27.6.2000.

2. The petitioner was appointed as a Junior Clerk in the year 1963 in Berhampur Municipality. He was promoted to the post of Senior Assistant in the year 1981. While working as such, he was directed to discharge the duties of Tax Daroga from 1993 onwards and he was continuing in the same post till the order of suspension was passed. The case of the petitioner is that from 1963 till 2000 there was no allegation whatsoever with regard to dereliction in duty or deficiency in service. A Vigilance Proceeding was initiated against the petitioner u/s 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act vide Berhampur Vigilance P.S. Case No. 27 of 2000 dated 5.5.2000 on the ground that the petitioner possessed assets disproportionate to his known sources of income. On the basis of the pending Vigilance Case, the Superintendent of Police, Vigilance, wrote a letter to the Executive Officer, Berhampur Municipality that

since a case has been registered against the petitioner under the Prevention of Corruption Act, for fair and impartial investigation, action as deemed proper may be taken against the petitioner. This letter was written by the Superintendent of Police, Vigilance, on 17.5.2000. Again on 20.5.2000 the Under-Secretary to Government in Housing and Urban Development Department wrote a letter to the Chairperson, Berhampur Municipality, to put the petitioner under suspension immediately and after receipt of the said letter, the Executive Officer, Berhampur Municipality, issued the order of suspension on 27.6.2000.

3. Shri A.K. Choudhury, learned counsel appearing for the petitioner, challenged the aforesaid order of suspension on the ground that under the Orissa Municipal Act, 1950 (hereinafter referred to as "the Act") the Under-Secretary to Government, Housing and Urban Development Department, has no jurisdiction to direct the Chairperson of the municipality to put the petitioner under suspension and as such any order passed pursuant to such direction is without jurisdiction.

4. Shri N.K. Misra, learned counsel appearing for the Berhampur Municipality, has filed a counter stating that the Chairperson of the Municipality in his letter dated 29.5.2000 (Annexure-3) had requested the Under-Secretary to reconsider the direction for putting the petitioner under suspension. but as the order under Annexure-2 was passed u/s 400(1) of the Act the Chairperson had to put the petitioner under suspension.

5. Section 76 of the Act runs as follows :

"76. Power to punish Municipal Officers or servants - Subject to the provisions of this Act or any rules thereunder and to such control as may be prescribed, the Chairperson of a Municipality may, ensure fine, withhold promotion, reduce, suspend, remove or dismiss any officer or servant of the Municipality in its service, except the Engineer, the Health Officer and the Executive Officer for any breach of departmental rules or discipline or for carelessness unfitness, neglect of duty or other misconduct :

Provided that -

(1) a mere order of suspension shall not be declared or construed as a punishment;

(2) during the period of suspension the person suspended shall be entitled to such subsistence allowance as is admissible to an employee of the State Government of similar rank;

(3) the Executive Officer, the Engineer and the Health Officer shall have power to suspend, fine or otherwise punish or dismiss or discharge any employee appointed by them and all actions taken in exercise of the said power shall be intimated to the Chairperson."

From this provision it is clear that the Chairperson of a Municipality has the authority to put an employee of the Municipality under suspension and the

Government has no role to play. Placing reliance on Section 400 of the Act, it is stated that under the said provision the State Government has also the power to direct suspension of a municipal employee. Section 400 of the Act deals with State Government's power to take action in certain cases. Under the said provision if at any time it appears to the Government that a Municipality or its Chairperson or the Executive Officer has made default in performing any duty imposed by or under the Act or any other Act, may, by order in writing, fix a period for the performance of such duty. Shri Choudhury submitted that Section 400 empowers the State Government to take action only when the Municipality fails in its duty to carry out developmental work within the municipal limit and such power is not to be exercised in case of an individual employee. Such argument is advanced by Shri Choudhury relying on Sub-secs. (2), (3) and (4) of Section 400 of the Act. Sub-section (2) of Section 400 of the Act prescribes that if such duty imposed by or under the Act is not performed within the period so fixed, the State Government may appoint some person to perform it and may direct that the expense of performing it, shall be paid from the Municipal Fund, as the case may be, within such time as they may fix, to such person by the Municipality. Sub-section (3) and (4) also relate to mode of payment from the Municipal Fund in the event action is taken under Sub-section (2) of Section 400. In view of such provisions, there is force in the argument of Shri Choudhury that Section 400 relates to development work and does not relate to individual employees of the Municipality. Apart from the powers of the State Government, it appears from Annexure-3 that after receipt of the letter from the Under-secretary under Annexure-2, the Chairperson of the Municipality had written a letter stating that continuance of the petitioner in the office does not give rise to any apprehension of influencing witnesses and there being no material, document or proof of coercion against the petitioner with the Municipality, it was not thought proper to place the petitioner under suspension, and a request was made to reconsider the decision communicated under Annexure-2, Since the Under-Secretary even after receipt of the letter of the Chairperson dated 29.5.2000 did not give any reply, the latter had no other option except to put the petitioner under suspension on 27.6.2000, u/s 76 of the Act it is the Chairperson who is empowered to put an employee of the Municipality under suspension. If the Chairperson was of the view that there was no material for putting the petitioner under suspension, he could not have been forced by the State Government to put the petitioner under suspension in exercise of power u/s 400 of the Act. It appears that the Chair-person has passed the impugned order of suspension being afraid of the fact that the State Government may take action u/s 400 of the Act. The impugned order being not supported by the Chairperson himself and having been passed under duress, is liable to be quashed.

I, therefore, allow the writ application and quash the order of suspension dated 27.6.2000 passed against the petitioner.