

State of Orissa and Another

Vs

Alekh Chandra Jena

Civil Appeal No. 3966 of 1987

(A. P. Sen, L. M. Sharma JJ)

07.12.1987

JUDGMENT

SHARMA J. -

1. Special leave granted. Arguments heard.

2. The respondent A. C. Jena was a Sarpanch of Padanipal Grama Panchayat, Orissa. He was removed from the officer under Section 115 of the Orissa Grama Panchayat Act, 1964 by the order of the State Government (petitioner 1 before us) dated October 24, 1986 as contained in Annexure D to the special leave petition which has been quashed by the impugned judgment of the Orissa High Court dated January 20, 1987 in O.J.C. No. 3300/86.

3. The relevant provisions of Section 115 of the Act read as follows :

115. (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 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, 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.

(2) The State Government on the report of the Collector under sub-section (1) shall, or if the State Government themselves are of the opinion that the circumstances specified in the said sub-section exist in relation to a Sarpanch or Naib-Sarpanch, then on their own motion, 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.

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(4) A Sarpanch or Naib-Sarpanch on removal from office under sub-section (2) shall also cease to be a member of the Grama Panchayat and such person shall not be eligible for election as a member for a period not exceeding four years as the State Government may specify.

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The Collector, Cuttack petitioner 2, before us, received a report (Appendix to Annexure A) from the Sub-Divisional Officer, Kendra Pada, stating the facts and circumstances which clearly satisfy the conditions mentioned in Section 115 of the Act, for the suspension and removal of the respondent. The Collector, Cuttack, thereupon suspended the Sarpanch by his order dated April 22, 1985 (Annexure A) and while so doing he expressly mentioned that on going through the report of the Sub-Divisional Officer he was satisfied that the Sarpanch acted in a manner as detailed in the Appendix and "his further continuance in office would be detrimental to the interest of the said Grama Panchayat as also of the inhabitants of the Grama". Accordingly a notice as required by sub-section (2) was served on the Sarpanch, who filed his detailed reply and was also personally heard. His explanation however was not considered satisfactory and an order dated October 24, 1986 bearing No. 19032/GP was passed removing him from the office of the Sarpanch. A second notification of the same date bearing No. 19039/GP was issued under sub-section(4). The Sarpanch in these circumstances moved the High Court under Article 226 of the Constitution.

4. The High Court at the stage of admission by a short order quashed the notifications issued against the petitioner "on the sole and simple ground that the order does not specify one of the mandatory requirements, i.e., his further continuance in the office would be detrimental to the interest of the Grama Panchayat or the inhabitants of the Grama". Elaborating the point the High Court observed as follows :

One of the circumstances mentioned in sub-section (1) is just indicated above. As the existence of the circumstances mentioned in sub-section (1) is condition precedent for passing an order of removal by the State Government, its absence makes the order wholly illegal and without jurisdiction.

5. As has been stated earlier the Collector while passing the order of suspension under sub-section (1) of Section 115 expressly stated that the further continuance of the petitioner in office would be detrimental to the interest of the Grama Panchayat and the inhabitants of the Grama. He relied upon the report of the Sub-Divisional Officer mentioning serious allegations against the Sarpanch which undoubtedly if true, satisfied the conditions for exercise of the power. Since it has not been suggested before us otherwise, we do not consider it necessary to deal with them except mentioning that besides many serious allegations, the report also said that certain money belonging to the Grama Panchayat which had been received at an auction was not deposited. In the order of removal the State Government after mentioning the allegations stated that the explanation of the Sarpanch was not acceptable and he was therefore being removed from the office. The allegations made against him thus were accepted as correct. In other words the State Government was of the opinion that the circumstances specified in sub-section (1) existed. It will be noticed that the language of sub-section (2) does not require a repetition of the necessary satisfaction in the same language as referable to sub-section (1). Besides the section cannot be interpreted to mandatorily lay down a rule for the authority concerned to express his conclusion in relation to the fulfilment of the conditions mentioned therein in a particular form using a particular set of words. What is contemplated by the section is the formation of an opinion in this regard after giving a reasonable opportunity to the Sarpanch in question to meet the allegations suggested and to announce the conclusion in unambiguous and express terms. All that has been done in this case. We do not, therefore, see any justification in the High Court quashing the orders impugned before it.

6. Accordingly the appeal is allowed, High Court's judgment is set aside and the writ application

filed before the High Court is dismissed.

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