

Pradeep Kumar Karji Vs. Collector and ors.

Pradeep Kumar Karji Vs. Collector and ors.

SooperKanoon Citation : sooperkanoon.com/533409

Court : Orissa

Decided On : Aug-12-1998

Reported in : 1998(II)OLR348

Judge : R.K. Patra and ; Pradipta Ray, JJ.

Acts : Orissa Grama Panchayat Act, 1964 - Sections 115

Appeal No. : Original Jurisdiction Case No. 15826 of 1997

Appellant : Pradeep Kumar Karji

Respondent : Collector and ors.

Advocate for Def. : S.P. Misra, Addl. Government Adv.

Advocate for Pet/Ap. : Jagannath Patnaik, A.A. Das, R. Rath, B. Mohanty and S. Das

Disposition : Petition allowed

Judgement :

R.K. Patra, J.

1. The petitioner who is the Sarpaneh of Tembaguda Gram Panchayat under Padampur Panchayat Samiti in this petition under Articles 226 and 227 of the Constitution of India seeks quashing of the order of suspension passed by the

Collector, Rayagada communicated in letter No. 2003/97 dated 31.7.1997 at Annexure-3.

2. The case of the petitioner is that he came to be elected as Sarpaneh of Tembaguda Gram Panchayat in January 1997. He is actively involved in social activities and has been discharging his duties and exercising power vested in him with due diligence. As he belongs to the opposite camp of the ruling party in the State, he has incurred wrath of local leaders and at their instance the Collector illegally placed him under suspension without any justifiable cause or reason.

3. The Collector who is opposite party No. 1 in the case has filed counter affidavit which was affirmed by the District Panchayat Officer, Rayagada. His case is that the Civil Supplies and Enforcement Squad along with the Revenue Officer-cum-Executive Magistrate, Gunupur checked and verified the stock and accounts of the special subsidised rice of Tembaguda Gram Panchayat in presence of the petitioner and the Secretary of the Gram Panchayat on 9.5.1997 at about 6.30 p.m. From the tally register and the third copy of the issue order produced by the petitioner, it revealed that he had lifted 55 quintals of S.S. rice from the depot of Orissa State Ware Housing Corporation at Padampur on 30.4.1997 by depositing two bank drafts for Rs. 13875/- and Rs. 14300/- but the said stock of rice lifted from the depot had not been accounted for in the stock register maintained by the Gram Panchayat. On the contrary the squad found 80 bags of rice in the Gram Panchayat godown and 10 bags of rice in another room of Gram Panchayat office building. The Sub-Collector, Gunupur in his letter No. 4836 dated 24.5.1997 (Annexure-A/3) while reporting this matter to the Collector recommended to take action against the petitioner under Section 115(1) of the Orissa Grama Panchayat Act, 1964 (hereinafter referred to as 'the Act'). Before the impugned order of suspension was passed, the Collector in his office letter No. 1720 dated 29.8.1997 (Annexure-B/3) called upon the petitioner to show cause within fifteen days as to why action as contemplated under Section 115 (1) of the Act should not be taken against him. He received the notice on 5.9.1997. Instead of submitting any cause, he sent a telegram along with a medical certificate on 9.9.1997 to grant him a week's time to submit his explanation. The telegram was received in the Collectorate on 20.9.1997. As adequate time was given to submit his explanation

and as he did not do the same, order of suspension was passed on 22.10.1997 (Annexure-3).

4. The scope and ambit of the provisions contained in Section 115 of the Act have been explained by series of decisions of this Court. Sub-section (1) of Section 115 deals with the Collector's power to suspend the Sarpanch or Naib-Sarpanch, as the case may be, from office. The Collector is also required to report the matter to the State Government. Under Sub-section (2), the State Government on the report of the Collector may after giving the person concerned reasonable opportunity of showing cause remove him from the office of Sarpanch or Naib-Sarpanch, as the case may be.

In *Biswanath Pradhan v. State of Orissa*, 44 (1997) CLT 404, this Court held that as a result of the suspension, the person concerned may not be for the time being entitled to continue to function as Sarpanch or Naib-Sarpanch but the suspension has not the effect of removing him from office. At the stage of passing the order of suspension, there is neither a *U/s* nor a determination by the Collector to call for a hearing. If hearing at the stage suspension is read by implication in Sub-section (1) that would mean that the Legislature envisaged two hearings for the person concerned for the same subject-matter and by two different authorities namely, the Collector and the State Government, a proposition that does not command itself for acceptance. We are in respectful agreement with the aforesaid observations and state that suspension of Sarpanch or Naib-Sarpanch, as the case may be, being an interim measure, question of issue of any show cause notice to him before the order of suspension is passed does not arise. In the case at hand, however, the Collector issued notice (Annexure-B/3) to show cause as to why he should not be suspended before the order of suspension was made.

5. Shri Rajib Rath, learned counsel for the petitioner submitted that the Sarpanch is an elected person and placing him under suspension would amount to keeping him away from office for certain period and, as such, the Collector is required to form his opinion basing on the submission of the delinquent before he passes the order of suspension.

In *Tarini Tripathy v. Collector Koraput*, 62 (1986) CLT 548, R.C.Patnaik, J. (as the then was) after analysing the provision (Section 115(1) of the Act) held as follows :

'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 order 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 permanently, 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.'

(It was a case of Pre-1991 amendment in which the opinion of the Collector was to be formed on the report of the S.D.O. By Orissa Act 9 of 1991, the Collector can form his opinion not only on the report of the Sub-divisional Officer but also on enquiry or inspection made by him.)

Tarini's case {supra} again came to be referred to in *Baikunthanath Mohanty v. State of Orissa*, 1987 (II) OLR 391. Again R.C.Patnaik, J. elucidated the ratio of *Tarini* and explained the legal position further in paragraph 8 of the judgment which reads-as follows :

'It was now become necessary for us to further elucidate the said decision and indicate the ambit of Section 115(1). It will be seen that the legislature in its wisdom has used the word 'wilful' in Section 115(1). The Collector must not only be of the opinion that the Sarpanch or the Naib-Sarpanch, as the case may be, has omitted or refused to carry out or violated the provisions of the Act, the Rules or the Orders made thereunder and abused and acted in a manner prejudicial to the interest of the inhabitants of the Grama Panchayat or the Grama, but he should also be of opinion that the Sarpanch omitted, refused or violated and abused, as the case may be, 'wilful'. A mere violation, omission, refusal or abuse is not enough. Omission, refusal, violation or abuse must also be wilful. The adverb 'wilful' governs and qualifies the conduct of the Sarpanch namely, that he wilfully omitted, refused, violated the provisions of the Act or the Rules or wilfully abused the rights, and privileges vested in him or wilfully acted in a manner prejudicial to the interest of the inhabitants of the Grama Panchayat or the Grama. Unless it is found that he did so wilfully the provision would not be attracted. The legislature has not empowered the Collector to take action if the Sarpanch or the Naib-Sarpanch merely omits or refuses to carry out or violates the provisions of the Rules, the Act and the Orders or abuses the rights and privileges vested in him or acts in a manner prejudicial to the interest of the Grama Panchayat unless he so does wilfully. The object and purpose appear to be clear.

India lives in villages. Panchayatiraj is democracy in action at the grass root level. The little man in the village does not comprehend abstruse political theories. He comprehends best what he sees at his door steps : democracy in operation through the Panchayatiraj system. And that has direct impact on him. Panchayatiraj system is the base of the pyramid of democracy. His faith in and commitment to democracy gets strengthened or eroded from what he perceives. An iota of disenchantment is likely to destroy the tone of preaching. The stronger we make it, the better for the weal of the polity and the nation. We weaken it at our peril.

It is to be assumed that an errant Sarpanch can trample on the provisions with impunity. Therefore, the provisions in Section 115 with adequate safeguards and checks. The legislature in its wisdom has provided that mere mistake, or error or

violation or abuse is not enough. The delinquency has to be graver. That is why it made 'wilful' delinquency culpable. That is then understood by the word 'wilful' or 'wilfully'.

In paragraph-10 it was further elucidated as follows:

'It, therefore, follows from an analysis of the provisions contained in Sub-section (1) of Section 115 that the three essentials as indicated in Tarini Tripathy's case must not only be present, but the Collector should also be satisfied that the alleged delinquency is 'wilful' that is to say, the infraction by way of acts or omissions was wilful and not accidental or negligent or involuntary but intentional, deliberate, calculated and conscious, with full knowledge of legal consequences following therefrom. This valuable safeguard was built into the provision by way of a check on the powers of the executive to dethrone an elected representative of the people from the august office. A Sarpanch may have failed to carry out the provisions of the Acts, or the Rules, may have violated them, certain of his acts may appear to be abuse of the powers, certain acts may appear to be detrimental to the Grama, but if such act, omission or exercise of power is not wilful, that is to say, deliberate, calculated, intentional and conscious, the Sarpanch does not lose his throne on which he is seated by the people'.

In *Ch. Srinivas Patra v. State of Orissa*, 1987 (II) OLR 407, speaking for the Bench, G.B.Patnaik, J. (as he then was) relying on the ratio of *Tarini Tripathy* (supra) held as follows :

'Since existence of 'circumstances' is a condition fundamental on the making of an opinion, the existence of the circumstance, if questioned has to be proved at least prima facie. It is not sufficient to assert that the circumstances exist and give no clue to what they are because the circumstances must be such as to lead to 'conclusions of certain definiteness'. We have taken note of the aforesaid two decisions to indicate the jurisdiction of a Court under Article 226 of the Constitution to interfere with an opinion formed by an officer under Statute, particularly in view of the fact that the order in question infringes the right of an elected representative to continue in office'.

The ratio of Tarini and Baikunthanath (supra) was followed by another Bench presided over by R.C. Patnaik, J. in Lingaraj Sahu v. State of Orissa, 1990 (I) OLR 44.

In Jagatram Patel v. State of Orissa, 79 (1995) CLT 324, D.P.Mohapatra, J. (as he then was) speaking for the Bench after referring to the ratio of Tarini Tripathy and Baikunthanath Mohanty (supra) voided the order of suspension of Sarpanch on the grounds, inter alia, that the Collector had not recorded in the order his satisfaction that circumstances existed to show that the Sarpanch had wilfully omitted or refused to carry out or violated the provisions of the Act or the Rules or orders made thereunder or abused the power, rights and privileges vested in him or acted in a manner prejudicial to the interest of the inhabitants of the Grama. We may state by way of clarification that mere extracting or quoting the words of Sub-section (1) of Section 115 in the order of suspension is not compliance of the law. At the same time, the requisite formation of opinion by the Collector even if is not self-evident in the order itself, the same can be proved independently by producing the relevant file in which the matter was dealt with by the Collector.

6. Keeping in view the ratio consistently laid down by this Court in the aforesaid cases, let us examine the impugned order of suspension which reads as follows :

'Whereas, I, Umakanta Mishra, I.A.S., Collector, Rayagada on the basis of the report of the Sub-Collector, Gunupur (vide letter No. 8191/97 dated 4.7.1997) is of the opinion that in view of the acts and omissions mentioned in the report, continuance of the Sarpanch of Tembaguda Grama Panchayat is prejudicial to the interest of the Grama Panchayat and the inhabitants of the Grama;

Now, therefore, in exercise of power conferred on me under Sub-section (1) of Section 115 of the Orissa Grama Panchayat Act, I, Umakanta Misra, I.A.S., Collector, Rayagada, do hereby place Sri Pradip Kumar Karji, Sarpanch, under suspension'.

Perusal of the aforesaid order would show that the Collector formed his opinion on the basis of the report of the Sub-Collector, Gunupur (it may be noted that the report of the Sub-Collector was sent to the Collector in letter No. 4836/97 dated

24.3.1997 (Annexure-B/2) and not in letter No. 8191/97 dated 4.7.1997 referred to in the impugned order). According to the Collector, the acts and omissions as reported by the Sub-Collector are such that petitioner's continuance as Sarpanch is prejudicial to the interest of the Grama Panchayat and the inhabitants of the Grama which necessitated his suspension.

7. As has held in the cases of Tarini Tripathy and Baikunthanath Mohanty (supra), in a case of suspension basing on the report of the Sub-Collector, the following requirements, inter alia, are to be satisfied:

(a) 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

(b) 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 requirements above are cumulative. Absence of any one of them will invalidate the suspension. Every delinquency or lapse might not satisfy the requirement (b). It must be wilful i.e. the infraction by way of acts or omissions was not accidental or negligent or involuntary but intentional, deliberate, calculated and conscious with full knowledge of legal consequences flowing therefrom.

8. The impugned order of suspension ex-facie did not satisfy the requirements enjoined in law. We had, therefore, called for the relevant records in which the case of the petitioner was dealt with by the Collector. The learned Additional Government Advocate did produce the same for our perusal. From the notings in the file, we find that after expiry of the time mentioned in the show cause notice issued to the petitioner, the matter was considered and note was placed before the Additional District Magistrate to approve the draft order of suspension as the petitioner had not submitted his reply within the time granted to him. The Additional District Magistrate in his turn placed the file before the Collector for his

orders on 26.9.1997 with the following note :

'As required under Section 115 of the Orissa Grama Panchayat Act, the Sarpanch of Tembaguda Grama Panchayat be placed under suspension forthwith'.

The Collector thereafter passed the following order :

'As proposed.

Sd/- Collector

28.10.1997'

On reading of the notings in the file, we have no hesitation to hold that the impugned order of suspension was passed without keeping the law in view as enunciated by this Court in the cases, referred to above. It is a clear case of non-application of mind.

For the aforesaid reasons, the impugned order of suspension cannot be sustained in law which is hereby quashed.

9. Before parting with the case, we may state that the Collector reported the matter regarding suspension of the petitioner to the State Government in the appropriate department in Office Memo No. 2005 dated 31.10.1997. In course of hearing of the case, we required the learned State counsel to inform us as to what action had been taken by the State Government on the report of the Collector. We were informed that the matter was still pending in the Government level. The scheme of Section 115 is that after the Collector suspends the Sarpanch or Naib-Sarpanch, as the case may be shall report the matter to the State Government. As provided under Sub-section (2), the State Government on the report of the Collector after giving the person concerned a reasonable opportunity of showing cause, may remove him from the office of Sarpanch or Naib-Sarpanch, as the case may be. Although no time is prescribed under the provision for disposal of the proceeding before the State Government, we are of the opinion that the proceeding should not be kept hanging like a Sword of Democles over head of the person concerned. In our considered opinion, the proceeding should be disposed of by the State

Government with utmost expedition and urgency without any sign of remissness or lethargy. If no satisfactory explanation is offered, the Court may in a given case draw adverse inference and quash the entire proceedings.

10. The writ petition is allowed. There would be no order as to costs.

Pradipta Ray, J.

11. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com