

PETITIONER:
STATE OF ORISSA AND ANR.

Vs.

RESPONDENT:
ALEKH CHANDRAJENA

DATE OF JUDGMENT 07/12/1987

BENCH:
SHARMA, L.M. (J)
BENCH:
SHARMA, L.M. (J)
SEN, A.P. (J)

CITATION:
1988 SCR (2) 177 1988 SCC Supl. 469
JT 1987 (4) 657 1987 SCALE (2) 1416

ACT:
Orissa Gram Panchayat Act, 1964: Section 115-Gram Panchayat Sarpanch-Removal of order of Collector-Whether to be in a particular form/language.

HEADNOTE:
%

The respondent was a Sarpanch of a Gram Panchayat. Consequent upon a report made by the Sub-Divisional officer, against the respondent stating the facts and circumstances which satisfied the conditions mentioned in s. 115 of the Orissa Gram Panchayat Act, 1964 for his suspension and removal, the second appellant, by his order dated 22.4.85, suspended the respondent. A notice, as required by sub-section (2) of s. 151, was served on the Sarpanch who filed his detailed reply and was also personally heard. As the explanation was not considered satisfactory, an order dated 24.10.86 removing him from the office of the Sarpanch was passed, in which it was mentioned that the appellant's further continuance in office would be detrimental to the interest of the Gram Panchayat as also of the inhabitants of the Grama. A second notification dated 24.10.86 under sub-section (4) was also passed.

The Sarpanch challenged the above notifications before the High Court. The High Court quashed the notifications on the sole and simple ground that the order did not satisfy one of the mandatory requirements, i.e. the appellant's further continuance in the office would be detrimental to the interest of the Gram Panchayat or inhabitants of the Grama.

Allowing the appeal,

^

HELD: 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. [181B]

178

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 the instant case. 1 [181B-C]

The second appellant, while passing the order of suspension under sub-section (1) of s. 115, expressly stated that further continuance of the appellant in the office would be detrimental to the interest of the Gram Panchayat and the inhabitants of the Grama. The State Government was of the opinion that the circumstances specified in sub-section (1) existed. 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. The High Court was, therefore, not justified in quashing the impugned orders. [180-H; 181A, C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3966 of 1987.

From the Judgment and Order dated 20.1.1987 of the High Court of Orissa of O.J.C. No. 3300 of 1986.

A.K. Panda for the Appellant.

J.R. Das for the Respondent

The Judgment of the Court was delivered by

SHARMA, J. Special leave granted. Arguments heard.

The respondent A.C. Jena was a Sarpanch of Padanipal Grama Panchayat, Orissa. He was removed from the office under section 115 of the Orissa Grama Panchayat Act, 1964 by the order of the State Government (petitioner No. I before us) dated 24.10.86, as contained in Annexure-D to the special leave petition, which has been quashed by the impugned judgment of the Orissa High Court dated 20.1.1987 in o.J.c No. 330()/86.

The relevant provisions of section 115 of the Act read as follows:

"115(1). If on the report of the Sub-Divisional

179

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-S. (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.

(3).....

(4) A Sarpanch or Naib-Sarpanch on removal from office under sub-S. (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.

(5).....

The Collector, Cuttack, petitioner No. 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 24.4.1985 (Annexure-A) and while so doing he expressly mentioned that on going through the

180

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 24.10.1986 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.

The High Court at the stage of admission by a short order quashed the notification 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 Gram Panchayat or the inhabitants of the Gram". 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"

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 Subdivisional 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,

181

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.

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

N.P.V.

Appeal allowed.

182