

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No. 21202 of 2017**

***Anam Charan Mohanta***

....

***Petitioner***

Mr. L.K. Mohanty, Advocate

*-versus-*

***State of Orissa and others***

....

***Opposite Parties***

Mr. A. Pradhan, ASC

Mr. R. Das Nayak, Advocate

**CORAM: JUSTICE V. NARASINGH**

**ORDER**  
**07.07.2022**

**Order No.**

**04.**

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner and learned counsel for the State.
3. Mr. Radharaman Das Nayak appeared on behalf of Opposite Party No.4.
4. The petitioner was a regularly selected Yogan Sahayak (JS) of Muktapur Grama Panchayat, Keonjhar has assailed the order of removal dated 02.11.2016 at Annexure-13 by the Opposite Party No.4 inter alia on the ground that the impugned order as passed is contrary to the direction of this Court and that even otherwise there is no substance in the allegations which form the basis of removal of the petitioner as JS.
5. Admittedly, the petitioner was selected as JS of Muktapur Grama Panchayat, Keonjhar District. Since he was not allowed to discharge his duties as such by the Opposite Party No.4 Sarapanch of

Muktapur Grama Panchayat, he assailed the same in this Court by filing W.P.(C) No.17346 of 2014.

6. This Court considering the grievance of the petitioner disposed of the W.P.(C) by the following order;

**x x x x x “Order No.2 dtd. 10.09.2014.**

*Heard Mr. G. Satpathy, learned counsel for the petitioner and Mr. S.Kanungo, learned Additional Government Advocate for the State.*

*The petitioner has filed this application seeking direction to the Opposite party to consider his grievance with regard to appointment to the post of Yogan Sahayak in respect of Muktapur Gram Panchayat in the district of Keonjhar. It is stated that to that extent the petition has made a representation to the Collector-cum-District Magistrate, Keonjhar-Opposite Party No.2 on 28.07.2014 vide Annexure-10 which is pending for consideration.*

*Considering the limited nature of grievance made by the petitioner, without expressing any opinion on the merits of the case, this writ petition is disposed of directing the Collector-Keonjhar -opposite party No.2 to consider the representation of the petitioner vide Annexure-10 and pass appropriate order within a period of two months from the date of receipt of a certified copy of this order along with copy of the writ petition with all its annexures before the opposite party No.2 who shall act upon the same within the time stipulated.*

*Urgent certified copy of this order be  
granted on proper application.” x x x x x*

In terms of the direction of this Court the Collector and District Magistrate, Keonjhar (Opposite Party No.2) by his order dated 20.04.2016 at Annexure-10 directed the Sarapanch Muktapur Grama Panchayat (Opposite Party No.4) to conduct personal hearing and disposed of the matter at her level.

7. And, pursuant to such direction the Grama Panchayat issued a show cause dated 27.06.2016 to which the petitioner responded and on consideration thereof, by the impugned order dated 02.11.2016 at Annexure-13 the removal of the petitioner in terms of the Grama Panchayat resolution dated 18.02.2014 was confirmed.

8. It is on record that this Court while considering the grievance of the petitioner in the earlier Writ Petition, adverted to above, directed the Collector Keonjhar Opposite Party No.2 to consider the representation of the petitioner (vide Annexure-10 therein) and pass appropriate order.

9. The learned counsel for the petitioner referring to the earlier order of this Court submits that in view of the same it is the Collector and Collector alone who can pass the final order and it was not open to the Collector to delegate his power to Grama Panchayat vide Annexure-10 and it is submitted that such exercise of power by the Collector ex-facie amounts to violation of the orders passed by this Court. Hence, it is submitted that on that score alone the impugned order at Annexure-13 admittedly having been passed by the Sarpanch in terms of the resolution of the Grama Panchayat is liable to be set-aside. It is stated that since the petitioner has made allegation(s)

against the Sarapanch, so it was not open for the Collector to ask the Sarapanch to look into the grievance.

10. The advertisement dated 18.05.2012 issued by the Block Development Officer Ghatagaon pursuant to which the petitioner was selected and engaged as JS dated 18.05.2012 is at Annexure-1, Clause-8 thereof clearly stipulates that a JS shall work under the Administrative control of the concerned Grama Panchayat. The relevant Clause-8 is quoted hereunder;

*x x x x x “8. He/ She shall work under the administrative control of the concerned GP and shall get the monthly honorarium from the GP out of the dealer commission & sale of empty gunny bags.” x x x x x*

11. It is apt to advert to the allegations stated to have been made by the petitioner in his representation addressed to the Collector at Annexure-8 dated 28.07.2014. On going through the recitals of the said representation this Court is of the considered opinion that it cannot be said that the petitioner has levelled any allegation against the Sarapanch which would consequently disentitle the said Sarapanch from looking into the grievance of the petitioner in terms of the direction issued by the Collector.

12. On a bare reading of the order of the Collector at Annexure-10, it is seen that the Opposite Party No.2-Collector only instructed Sarapanch, Muktapur Grama Panchayat to conduct personal hearing and dispose of the matter at her level. The operative paragraphs of the said order is quoted hereunder;

*x x x x x “Gone through the statement submitted by the B.D.O., Ghatagaon vide his letter No.4296/Dt.20.11.2014 along with copies of G.P. resolutions on dt. 18.02.2014*

*and dt.01.03.2014 wherein the G.P. passed resolution for dismissal of the Petitioner Sri Anama Charan Mahanta.*

*It is ascertained from the report of the B.D.O., Ghatagaon that Sri Anama Charan Mohanta, Ex- Jogana Sahayak has not been given sufficient opportunity for hearing of his grievance.*

*Hence, the Sarapanch, Muktapur G.P. is instructed to conduct personal hearing and dispose of the matter at her level.” x x x x x*

13. It is apposite to restate that this Court had only directed consideration of petitioner's representation without expressing any opinion on the merits of the matter.

14. The submission of the learned counsel for the petitioner that this Court conferred jurisdiction on the Collector alone to dispose of the grievance of the petitioner on merits in exclusion of others does not stand to reason and hence challenge of the petitioner to the order of the Collector at Annexure-10 directing the Sarapanch, Muktapur Grama Panchayat to look into the grievance of the petitioner **fails** as the same is inconsonance with the terms of the advertisement quoted herein above and also in tune with the direction of this Court extracted in the preceding paragraph.

15. It is on record that the Panchayat Samiti Ghatgaon vide Annexure-3 dated 14.02.2014 issued a show cause notice to the petitioner stating inter alia that why action should not be taken against her for collection of Rs.2/- from the beneficiaries instead of Rs.1/- per kg. for distribution of PDS rice.

16. In response thereof, the petitioner submitted her show cause stating therein that recovery of charging of Rs.2/- was inadvertently made and she has in fact returned the entire excess money.

17. At this stage it would be just to refer to Para-6 of the counter affidavit filed by the authorities;

*x x x x x “That with regard to the contention made in para-8 of the writ petition, it is humbly submitted that the announcement of Govt. of Odisha regarding sale of PDS rice @ Rs.1.00 per kg was made through Printing media and mass media. All the Gram Panchayats were informed regarding the matter in time. But petitioner sold the PDS rice @ Rs.2.00 per kg as per his own decision. **However the petitioner has returned Rs.1.00 per kg. to all beneficiaries later on.**” x x x x x*

which fortifies the stand of the petitioner that there has been no irregularity as such.

18. The second show cause to petitioner was issued on 27.06.2016 at Annexure-11 purportedly on account of the order passed by the Collector and District Magistrate, Keonjhar extracted herein above.

19. The learned counsel for the State referring to the said order of the Collector, submits that there is no irregularity in the issuance of second show cause. The petitioner replied to the same at Annexure-12 and on consideration thereof the impugned order at Annexure-13 was passed. And, as such there is no illegality or arbitrary exercise of power which merits interference of this Court in exercise of its plenary jurisdiction.

20. It is evident from the direction of the Collector extracted herein above that the Grama Panchayat was instructed to dispose of the matter after giving personal hearing. Such direction does not ipso

facto clothe the Sarapanch with the power to issue show cause afresh as has been done in the case at hand.

21. On a conspectus of materials on record this Court is of the considered opinion that the action of the Grama Panchayat dated 27.06.2016 issuing the second show cause at Annexure-11 is without jurisdiction and is out-come of arbitrary exercise of power. The reliance and reference to order passed by this Court is just a cover up to justify the unjustifiable.

22. Since in the considered opinion of this Court issuance of Annexure-11 is bad in law, the consequential order at Annexure-13 passed by the Opposite Party No.4-Sarapanch confirming the removal of the petitioner as JS of Muktapur Grama Panchayat is liable to be set-aside.

23. Accordingly, the order of removal of the petitioner as Yogan Sahayak (JS) in Muktapur Grama Panchayat at Annexure-13 is set-aside and consequentially the Opposite Parties shall allow the petitioner to resume duties as such within a period of two months, from the date of receipt /production of the order, if there is no other legal impediment.

24. Accordingly, the writ petition stands disposed of.

25. There shall be no order as to cost.

**(V. NARASINGH)**  
**Judge**

*Santoshi*