

STATE OF ORISSA AND ORS.

v.

MD. ILLIYAS

NOVEMBER 22, 2005

[ARIJIT PASAYAT AND ARUN KUMAR, JJ.]

Orissa Gram Panchayat Act, 1964; Section 115:

Allegation of abuse of powers, rights and privileges against Sarpanch—Suspension—Challenge to—Quashed by High Court holding that pre-requisite conditions for suspension not satisfied—On appeal, Held: Collector as empowered to suspend Sarpanch on the basis of an inquiry report and satisfying that his continuance would be detrimental to the interest of Gram Panchayat—A reasonable opportunity to show cause could be granted only at the stage of his removal—Since Collector on the basis of enquiry report satisfied that the Sarpanch had willfully abused the powers vested in him, High Court erred in quashing the order of his suspension relying on an earlier decision of the Supreme Court without looking into the facts and circumstances of that case—Hence, judgment of the High Court indefensible.

Words and Phrases:

'wilful'—Meaning of in the context of Section 115 of the Orissa Gram Panchayat Act, 1964.

Respondent, Sarpanch of Gram Panchayat, allegedly collected illegal gratification from the poor villagers by giving them false assurance to provide houses under the Indira Avas Yojna. The Collector directed the Sub-Collector to inquire into the matter. After conducting inquiry, the sub-collector submitted his report concluding that the Sarpanch had misused his powers. On the basis of the report, the Collector suspended the respondent-Sarpanch in purported exercise of the powers conferred on him under Section 115(1) of the Orissa Gram Panchayat Act. The order was challenged by the respondent by filing a writ petition. High Court quashed the order on the ground that pre-requisite conditions before suspension as stipulated under Section 115(1) of the Act were not satisfied. Hence the present appeal.

- A** It was contended by the appellant-State that the High Court is clearly in error in its analysis of Section 115(1) of the Act; that the Sub Collector's report is clearly indicative of the manner in which there was abuse of powers, rights and privileges vested in respondent, Sarpanch and as to how these acts were prejudicial to the interest of the Grama Panchayat and inhabitants of the Grama; and that the Collector had categorically stated in his order that the acts were wilful in nature.
- B**

- Respondent submitted that by merely referring to the language of Section 115(1) of the Act the Collector could not have concluded that acts of the respondent were prejudicial acts or amounted to abuse of powers and rights and privileges vested in him; and that before the inquiry was conducted by the Sub-Collector the respondent was not granted any opportunity.
- C**

Allowing the appeal, the Court

- D** HELD: 1. The Collector, on the basis of an inquiry or inspection or report of Sub-Divisional Officer, as the case may be, has to form opinion whether circumstances exist to show that the Sarpanch has wilfully omitted or refused to carry out or has violated the provisions of the Orissa Gram Panchayat Act or the rules or orders made thereunder or has abused the powers, rights and privileges vested in him or has acted in a manner
- E** prejudicial to the interest of the inhabitants of the Grama, and that further continuance of such person in office would be detrimental to the interest of the Grama Panchayat or inhabitants of the Grama. On formation of such opinion he may by order suspend the Sarpanch or Naib-Sarpanch, as the case may be, from office and report the matter to the State
- F** Government. It is only at the stage of removal, a reasonable opportunity to show cause is to be granted to the concerned Sarpanch or Naib-Sarpanch, as the case may be. [402-B-E]

- 2.1. For bringing in application of Section 115(1), the acts complained of must have been done wilfully by the Sarpanch or Naib-Sarpanch, as the case may be. Order of the Collector after referring to the acts purportedly done by the respondent/Sarpanch categorically stated that he was satisfied that the Sarpanch had wilfully abused the powers, rights and privileges vested in him and had acted in the manner prejudicial to the interest of the inhabitants of the Grama. [402-G, H]
- G**

- H** 2.2. An act is said to be 'wilful' if it is intentional, conscious and

deliberate. The expression 'Wilful' excludes casual, accidental, *bona fide* or unintentional acts or genuine inability. A wilful act does not encompass accidental, involuntary, or negligence. It must be intentional, deliberate, calculated and conscious with full knowledge of legal consequences flowing therefrom. The expression 'wilful' means an act done with a bad purpose, with an evil motive. "Wilful" is a word of familiar use in every branch of law, and although in some branches of law it may have a special meaning, it generally, as used in courts of law, implies nothing blameable, but merely that the person of whose action or default the expression is used is a free agent, and that what has been done arises from the spontaneous action of his will. It amounts to nothing more than this, that he knows what he is doing, and intends to do what he is doing, and is a free agent. [403-C-E]

Rakapalli Raja Rama Gopala Rao v. Naragani Govinda Sehararao, [1989] 4 SCC 255, relied on.

Re Young and Harston by Bowen L.J. 31 Ch. D. 174; *Wheeler v. New Merion Board Mills*, (1933) 2 K.B. 669; *Gayford v. Chouler* by Day J., (1898) 1 Q.B. 316 and *R. v. Senior* by Russel C.J., (1899) 1 Q.B. 283, referred to.

2.3. When the allegation is of cheating or deceiving, whether the alleged act is wilful or not depends upon the circumstances of the concerned case and there cannot be any strait jacket formula. The High Court did not discuss the factual aspects and by merely placing reliance on earlier decision of the Court held that pre-requisite conditions were absent. Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. A case is a precedent and binding for what it explicitly decides and no more.

[403-G, H; 404-C-E]

State of Orissa v. Sudhansu Sekhar Misra and Ors., AIR (1968) SC 647 and *Union of India and Ors. v. Dhanwanti Devi and Ors.*, [1996] 6 SCC 44, relied on.

3.1. The High Court in its judgment has not indicated as to why according to it the pre-requisite conditions stipulated were not satisfied. In the instant case various acts of the respondent/Sarpanch are *prima facie* indicative of abuse of powers, rights and privileges vested on him. The

- A** Collector, on the basis of materials contained in the report of the Sub-Collector has opined that these are wilful acts. The High Court has completely lost sight of these relevant facts. The Collector's opinion at the stage of consideration is really a *prima facie* view on the basis of materials before him. Unless there is total absence of material and/or non-application of mind the Courts should not interfere. The case at hand does not belong to that category. Looking from any angle, the High Court's judgment is indefensible, hence set aside. [404-F-H; 405-A, C]
- B**

3.2. It is clarified that no opinion is expressed on the merits of the case, so far as action under sub-section (2) of Section 115 of the Act is concerned. [405-C]

- C** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6980 of 2003.

From the Judgment and Order dated 15.3.2004 of the Orissa High Court in W.P.(C) No. 5725 of 2003.

- D** Janaranjan Das and Swetaketu Mishra for the Appellants.

Ms. Promila for the Respondent.

The Judgment of the Court was delivered by

- E** **ARIJIT PASAYAT, J.** Leave granted.

- Challenge in this appeal is to the judgment of a Division Bench of the Orissa High Court. By the impugned judgment the High Court held that the pre-requisites for taking such action under Section 115(1) of the Orissa Gram Panchayat Act, 1964 (in short the 'Act') were not satisfied and, therefore, the order of Collector, Jajpur, dated 3.6.2003 directing suspension of the respondent was illegal.
- F**

The factual background needs to be noted in brief:

- G** The respondent was elected as Sarpanch of Neulapur Gram Panchayat in March, 2002, Purportedly acting on the basis of the allegations made by several villagers of that gram panchayat inquiry was conducted by the Sub-Collector, Jajpur. Several allegations were received by the Sub-Collector from the villagers as well as the member of the Legislative Assembly. By Order dated 17.5.2003 the Collector directed Sub-Collector to inquire into the
- H** allegations made against the respondent-Sarpanch. On 23.5.2003 the Sub-

Collector conducted inquiry and recorded statements of the complainants and thereafter the respondent. On 27.5.2003 Sub Collector submitted his report concluding that the respondent had misused his power as Sarpanch and had failed to discharge his duties. Considering the report of the Sub-Collector, by order dated 3.6.2003 the Collector suspended the respondent from the office of Sarpanch in purported exercise of powers conferred under Section 115(1) of the Act. The order was challenged by the respondent by filing a writ petition before the High Court. It was submitted that there was no material to show that alleged acts of the respondent were wilful. The State Government filed its counter pointing out that serious allegations were made which were inquired into by the Sub-Collector, who had categorically reported that there was truth in the allegations clearly indicating causes of powers, rights and privileges vested in him (the respondent) and the acts were prejudicial to the interest of inhabitants of Grama, and his further continuance would be detrimental to the interest of the Grama Panchayat and inhabitants of the Grama. High Court referred to an earlier decision in *Sanatan Jena v. Collector, Balasore and Anr.*, (2001) I OLR 206 where reference was made to two earlier decisions i.e. *Pradeep Kumar Karji v. Collector, Rayagada and Ors.*, (1998) II OLR 348 and *Tarini Tripathy v. Collector, Koraput and Ors.*, (1986) III OLR 497. On the basis of the said judgment in *Sanatan's* case (supra) the High Court held as follows :-

“This being the settled position of law and bare perusal of the report of the Sub Collector, we are of the opinion that the same do not satisfy the pre-requisite conditions stipulated under Section 115(1) of the Orissa Gram Panchayat Act. For the aforesaid reasons, the order of suspension fails to withstand the judicial scrutiny which is in our considered opinion liable to be quashed. Accordingly, we quash the impugned order passed in Annexure-I.”

Portion of the judgment in *Sanatan's* case (supra), which was quoted by the High Court to conclude as above reads as follows :

“Suspension of an elected representative is indeed a drastic action and should not be taken recourse to cursorily and in a mechanical manner. This view was adopted in an earlier decision of this Court reported in (1998) II OLR 348 (*Pradeep Kumar Karji v. Collector, Rayagada and Ors.*). Further while vesting the power upon the Executive to suspend an elected representative, the Legislature thought it just and prudent to provide certain safeguards against the arbitrary exercise of such power. As has been held in the decision of the Court

A reported in (1986) II OLR 497 (*Tarini Tripathy v. Collector, Koraput and Ors.*), all the ingredients stipulated under Section 115(1) of the Act are cumulative. Absence of any of one of the said ingredients would make the order of suspension vulnerable. In consonance with

B that the omissions or commissions found against a Sarpanch were wilful. While bringing the tenure of an elected representative to a premature end, either temporarily or permanently, utmost care and circumspection ought to be exercised. In other words, the right of an elected representative to continue in office for the full tenure should not be lightly tinkered with by the Executive.”

C In support of the appeal, learned counsel for the appellants submitted that the High Court is clearly in error in its analysis of Section 115(1) of the Act. The Sub Collector’s report clearly indicates the manner in which there was abuse of powers, rights and privileges vested in respondent no. 1 and as to how the acts were prejudicial to the interest of the Grama Panchayat and

D inhabitants of the Grama. The Collector had categorically stated in his order that the acts were wilful in nature.

Learned counsel for the respondent submitted that by merely referring to the language of Section the Collector could not have concluded that acts of the respondent were prejudicial acts or amounted to abuse of powers and

E rights and privileges vested in him. It was submitted that before the inquiry was conducted by the Sub-Collector the respondent was not granted any opportunity. On the other hand the statement of the respondent was recorded after the statements of the so called complainants were recorded. Even a copy of the Sub-Collector’s report was not supplied to the respondent.

F In order to appreciate the rival submissions Section 115 needs to be quoted. The same reads as under :

“115. *Suspension and removal of Sarpanch, Naib Sarpanch and member* - (1) If the Collector, on an inquiry or inspection made by

G him or on the report of the Sub Divisional Officer is of the opinion that circumstances exist to show that the Sarpanch of Naib-Sarpanch of a Gram 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

H that the further continuance of such person in office would be

detrimental to the interest of the Gram 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. A

(2) The State Government, on the report or the Collector under sub-section (1) shall, or if the State Govt. themselves are of the opinion that the circumstance 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. B

(3) In the case of Sarpanch or Naib-Sarpanch, if he is not already under suspension in pursuance of an order under sub-section (1), the State Government may, pending the disposal of the proceedings before them under sub-section (2) suspend the Sarpanch or Naib-Sarpanch, as the case may be. C

(3a) The State Government, may, at any time during the pendency of Proceedings before them under sub-section (2), revoke the order of suspension of a Sarpanch or Naib-Sarpanch passed under sub-section (1) or under sub-section (3). D

(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. E

(5) The provisions of this section shall, so far as may be, apply in respect of any member of the Grama Panchayat not being a Sarpanch or Naib-Sarpanch, provided that no such member shall be liable to be placed under suspension under the said provisions. F

(6)(a) Whenever the Collector is of the opinion that the Sarpanch of a Grama Panchayat has failed in convening any meeting of the Grama Panchayat within a period of three continuous months he may, after making such enquiry as he deems fit, by order, remove the Sarpanch from office and may also declare him not be eligible for election as a member for a period not exceeding one year as he may specify in his order and on such order being made the Sarpanch shall cease to be a member of the Grama Panchayat. G

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- A (b) Nothing contained in the preceding sub-sections shall apply in respect of a default as specified above.”

The scheme of Section 115 shows that the Collector can take action either on the basis of an inquiry or inspection made by him or on the report of the Sub-Collector. On the basis of such inquiry or inspection or report of Sub-Divisional

- B Officer, as the case may be, he has to form opinion whether circumstances exist to show that the Sarpanch has wilfully omitted or refused to carry out or has violated the provisions of the Act or the rules or orders made thereunder or has abused the powers, rights and privileges vested in him or has acted in a manner prejudicial to the interest of the inhabitants of the Grama, and that
- C further continuance of such person in office would be detrimental to the interest of the Grama Panchayat or inhabitants of the Grama. On formation of such opinion 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. After the report of the Collector is received by the State Government or if the State Government themselves is of the opinion that the circumstances specified
- D in sub-section (1) exist in relation to a Sarpanch or Naib-Sarpanch then on their own motion 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. It is only at the stage of removal, a reasonable opportunity to show cause is to be granted to the concerned Sarpanch or Naib-Sarpanch, as the case may be.

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When the Collector acts in terms of sub-section (1), there is no question of granting an opportunity to the concerned Sarpanch or Naib-Sarpanch, as the case may be, to have his say in the matter. Sub-section (3) empowers the State Government to suspend the Sarpanch or Naib-Sarpanch, as the case

F may be, if he is not already suspended in pursuance of order under sub-section (1) while the proceedings before them are pending under sub-section (2). Further, during pendency of the proceedings under sub-section (2) the State Government may under sub-section (3-a) revoke order passed either under sub-section (1) or under sub-section (3).

- G For bringing in application of Section 115(1) the acts complained of must have been done wilfully by the Sarpanch or Naib-Sarpanch, as the case may be. Order of the Collector after referring to the acts purportedly done by the respondent categorically stated the he was satisfied that the respondent had wilfully abused the powers, rights and privileges vested in him and had acted in the manner prejudicial to the interest of the inhabitants of the Grama.

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The allegations were to the effect that he had collected illegal gratification from poor beneficiaries of the Indira Avas Yogana by giving false assurance to provide them India Avas Houses, and also from some people for providing HUDCO loans. The Sub-Collector had recovered statements of seven of such beneficiaries and had concluded that by taking advantage of the simplicity of the poor persons, the respondent had cheated the poor beneficiaries who relied upon the words of the respondent and were finally deceived.

At this juncture it is desirable to consider the true, import of the word 'wilful'. An act is said to be 'wilful' if it is intentional, conscious and deliberate. (See : *Rakapalli Raja Rama Gopala Rao v. Naragani Govinda Sehararao*, [1989] 4 SCC 255).

The expression. 'wilful' excluded casual, accidental, *bona fide* or unintentional acts or genuine inability. It is to be noted that a wilful act does not encompass accidental, involuntary, or negligence. It must be intentional, deliberate, calculated and conscious with full knowledge of legal consequences flowing therefrom. The expression 'wilful' means an act done with a bad purpose, with an evil motive.

"Wilful" is a word of familiar use in every branch of law, and although in some branches of law it may have a special meaning, it generally, as used in courts of law, implies nothing blameable, but merely that the person of whose action or default the expression is used is a free agent, and that what has been done arises from the spontaneous action of his will. It amounts to nothing more than this, that he knows what he is doing, and intends to do what he is doing, and is a free agent. (Per Bowen L.J. in *Re Young and Harston* 31 Ch. D. 174). It does not necessarily, connote blame, although the word is more commonly used of bad conduct than of good. (See *Wheeler v. New Merion Board Mills*, (1933) 2 K.B. 669). Whatever is intentional is wilful. (per *Day J. in Gayford v. Chouler*, (1898) 1 Q.B. 316). As observed by Russell C.J. in *R. v. Senior*, (1899) 1 Q.B. 283, "wilfully" means deliberately and intentionally.

When the allegation is of cheating or deceiving, whether the alleged act is wilful or not depends upon the circumstances of the concerned case and there cannot be any strait jacket formula. The High Court unfortunately did not discuss the factual aspects and merely placing reliance on earlier decision of the Court held that pre-requisite conditions were absent. Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts.

- A Each case presents its own features. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates - (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts: (ii) statements of the principles of law applicable to the legal problems disclosed by the facts: and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: *State of Orissa v. Sudhansu Sekha Misra and Ors.*, AIR (1968) SC 647 and *Union of India and Ors. v. Dhanwanti Devi and Ors.*, [1996] 6 SCC 44. A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In *Quinn v. Leatham*, (1901) AC 495 H.L., Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generally of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.

- The High Court has not indicated as to why according to it the pre-requisite conditions stipulated were not satisfied. Vulnerability of the High Court's judgment is also apparent from the fact that it referred to the report of the Sub Collector and held that the same did not satisfy the pre-requisite conditions stipulated. The Sub-Collector's report indicated circumstances to show that Sarpanch had wilfully omitted or refused to carry out or has violated the provisions of the Act or the Rules or Orders made thereunder or has abused the powers, rights and privileges vested in him or has acted in the manner prejudicial to the interest of the inhabitants of the Grama.

- In the instant case various acts of the respondent are *prima facie* indicative of abuse of powers, rights and privileges vested on the Sarpanch. The Collector, on the basis of materials contained in the report of the Sub-Collector has opined that these are wilful acts. The High Court has completely

lost sight of these relevant facts. The Collector's opinion at the stage of consideration is really a *prima facie* view on the basis of materials before him. Unless there is total absence of material and/or non-application of mind the Courts should not interfere. The case at hand does not belong to that category. A

A plea has been advanced by learned counsel for the appellant that the Collector does not have to opine on the wilful aspect when the act impugned is an abuse of the powers, rights and privileges, there is no need to examine that aspect as the Collector has himself characterized the act as wilful. B

Looked from any angle, the High Court's judgment is indefensible and is set aside. We make it clear that we have not expressed opinion on the merits of the case, so far as action under sub-section (2) of Section 115 is concerned. That is a matter which is to be adjudicated by the State Government. Learned counsel for the respondent submitted that prayers shall be made before the State Government to revoke the suspension in terms of sub-section (3a) of Section 115. If any prayer is made the same shall be considered in accordance with law, and we express no opinion in that regard. C D

The appeal is allowed, with no order as to costs.

S.K.S.

Appeal allowed.