

THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Extra Ordinary Jurisdiction)

DATED : 13-09-2011

CORAM

HON'BLE THE ACTING CHIEF JUSTICE
MR. JUSTICE S. P. WANGDI

WP(C) No.17 of 2011

1. Shri M. B. Thatal,
S/o Shri Bartey Darjee,
Sabhapati, 13-Gyalshing Omchung Gram Panchayat,
R/o Legship, P.O. Legship,
P.S. Gyalshing,
West Sikkim.
2. Shri Tara Kumar Sigdel,
S/o Shri Jagat Bahadur Sigdel,
Sachiva, 13-Gyalshing Omchung Gram Panchayat,
R/o Lower Gyalshing,
P.O. + P.S. Gyalshing,
West Sikkim.

... Petitioners

versus

1. State of Sikkim
through the Secretary,
Rural Management & Development Department,
Government of Sikkim,
Tashiling, Gangtok.
2. District Collector (West),
District Administrative Centre,
Gyalshing,
West Sikkim.
3. Prescribed Authority,
Director-cum-Special Secretary (Panchayat),
Rural Management & Development Department,
Government of Sikkim,
Tashiling, Gangtok.

4. The Additional District Collector (Development),
Rural Management & Development Department,
Government of Sikkim,
Tashiling, Gangtok. **... Respondents**

For Petitioners : Mr. A. K. Upadhyaya, Senior Advocate with Ms. Mukul Rani Parajuli, Ms. Dawa Jangmu Sherpa and Mr. Thupden G. Bhutia, Advocates.

For State-Respondents : Mr. J. B. Pradhan, Additional Advocate General with Mr. Karma Thinlay Namgyal, Government Advocate, Mr. S. K. Chettri, Assistant Government Advocate and Mr. D. K. Siwakoti, Advocate.

For Rural Management and Development Department : Ms. Sangita Pradhan, Advocate/ Retainer.

J U D G M E N T

Wangdi, ACJ.

This Petition has been filed under Article 226 of the Constitution of India praying for a writ of mandamus or any other appropriate writ, order or direction of the like nature to quash the impugned Notification No.20/RM&DD/P dated 22-03-2011, Annexure P-10, by which the Petitioners have been removed from their Offices as Sabhapati and Sachiva respectively of 13-Gyalshing Omchung Gram Panchayat, West District, under sub-Section (1) of Section 113 of the Sikkim Panchayat Act, 1993, (in short the "Act") and Notice issued vide Memo No.345/ADC/(D)/W dated 06-04-2011, Annexure P-12 (collectively), calling for election to fill the resultant



vacancies of the Sabhapati and the Sachiva, 13-Gyalshing Omchung Gram Panchayat on 20-04-2011 under Sections 28 and 33 of the Act. The Petitioners are Members of 13-Gyalshing Omchung Gram Panchayat and held the posts of Sabhapati and Sachiva respectively having been elected in the Panchayat Election held in the year 2007.

2(a). It is stated that on 01-10-2008, the Petitioners were approached by one Mr. J. B. Sikdel of Kyongsa, Gyalshing, West Sikkim, aggrieved by the District Collector, the Respondent No.2, having issued to him a Notice under sub-Section (1) of Section 6 of the Sikkim Public Premises (Eviction of Unauthorised Occupants and Rent Recovery) Act, 1980, vide Memo No.787/DC(W) dated 01-10-2008, which is Annexure P-1 to the Writ Petition, directing removal or disposal of his building by public auction and requesting the Petitioners to intervene in the matter as elected representatives of the area.

(b). In response to the request, the Petitioners as responsible elected representatives, wrote a letter dated 05-11-2008, Annexure P-2, requesting the District Collector, Respondent No.2, to consider the grievance of the said Mr. J. B. Sikdel and to take necessary steps regarding the ongoing constructions that had caused severe damage to his property. In the letter dated 05-11-2008, the District Collector was

further requested to refer to the inspection report of landslide at Kyongsa dated 25-07-2008 and the report on the cause of slope failure submitted by the Senior Geologist, Mines, Minerals and Geology Department, Government of Sikkim, dated 01-08-2008, Annexure P-3 (collectively), in response to a requisition made by the Additional District Collector, West.

(c). As a consequence of the Petitioners having written letter dated 05-11-2008, Annexure P-2 to the District Collector under their joint signatures which had been mistakenly styled as "Notice" due to their ignorance, a show cause notice under Section 113 of the Act was issued by the District Collector, West, Respondent No.2, vide Memo No.333/DC(W) dated 07-11-2008, Annexure P-4 (collectively) to the Petitioners directing them to show cause as to why they should not be removed from the Office of the Panchayat Sabhapati and Panchayat Sachiva respectively for abusing the powers vested in them. This was followed by another show cause notice vide Memo No.335/DC(W) dated 07-11-2008, Annexure P-5 (collectively) issued by the District Collector directing them to show cause as to why criminal case should not be instituted against the Petitioners under appropriate provisions of the Indian Penal Code for causing obstruction of performance of legal duties by a Government servant, namely, Mr. Zigme Bhutia, DPO/DRM, West who was

deputed to dismantle and remove the aforesaid building on 06-11-2008. This notice was issued under Section 51(a) & (b) of the Disaster Management Act, 2005.

(d). The Petitioners by the letter No.79/13-Gyz-Omc/G.P.U dated 11-11-2008, Annexure P-6, replied to the aforesaid show cause notices expressing their regret for the mistakes committed by them due to their ignorance. It is stated that they are semi-literate persons having read only up to Class VIII and Class XII respectively hailing from very humble background. It was further stated that the Petitioner No.1 belongs to Scheduled Caste Community of Sikkim and have been elected from a reserved seat and is the only elected Member from such Community in the 13-Gyalshing Omchung Gram Panchayat. However, the Petitioners were issued another show cause notice and, this time under sub-Section (2) of Section 113 of the Act vide Memo No.488/RM&DD/P dated 27-02-2010, Annexure P-7, by the Respondent No.3 who is the Prescribed Authority under the Act, directing them to explain on the complaint received from the District Collector, West, of them having grossly abused the powers vested in them and having over-stepped their authority as a responsible elected representatives of the Panchayat. It is stated that the Petitioners submitted their replies to the show cause notice vide their letters dated 12-

03-2011 respectively, Annexure P-8 (collectively) to the Prescribed Authority, Respondent No.3, stating that they had acted in good faith as elected representatives in response to the complaint of a aggrieved person of their area and also expressed their regrets for having referred to their letter written to the District Collector as "Notice" which was on account of their ignorance. In response to this reply, the Petitioners received another show cause notice from the Prescribed Authority, Respondent No.3, dated 20-05-2010, Annexure P-9 informing them that the explanation given by them in their letter Annexure P-8 was not conclusive enough and, therefore, requested for the presence of the Petitioners in person in the Office of the Respondent No.3 on 07-06-2010 at 11 a.m. failing which it was stated that decision would be taken against him *ex parte*.

(e). After the proceedings that was held on 07-06-2010 in pursuance of the Notice, Annexure P-9, the Secretary, Rural Management and Development Department, the Respondent No.1, on being dissatisfied with the explanation and their submissions, issued Notification No.20/RM&DD/P dated 22-03-2011, Annexure P-10 removing the Petitioners from their respective Offices with immediate effect with the direction that the resultant vacancy would be filled by election and in accordance with Sections 28 and 33 of the Act. This

was followed by Notice vide Memo No.548/ADC/(D)(W)/ dated 24-03-2011, Annexure P-11 (collectively) issued by the Additional District Collector (Development), Rural Management and Development Department, Respondent No.4, declaring the removal of the Petitioners from their respective Offices with immediate effect and notifying the election to elect Sabhapati and Sachiva, 13-Gyalshing Omchung Gram Panchayat, West District on 01-04-2011, for which all members of the Gram Panchayat were directed to be present. It is stated that the Notification dated 22-03-2011, Annexure P-10 and Notice dated 06-04-2011, Annexure P-12 (collectively) removing the Petitioners from the respective Offices are illegal having been issued in violation of the laws and, therefore, liable to be quashed.

3. In the counter-affidavit filed on behalf of the Respondents, the sequence of events narrated by the Petitioners have not been disputed. The Respondents have only asserted that the Petitioners had abused their powers vested in them by forcibly obstructing a Government Official from discharging his lawful duties, i.e., when Mr. Zigmee Bhutia, DPO/DRM, West deputed by the District Collector, West to dismantle and remove the building of Shri J. B. Sikdel which had collapsed causing danger and inconvenience to the public and, while doing so they had used abusive language.



4. It is stated that the Petitioners were provided sufficient opportunities to defend themselves and that necessary show cause notices were issued to the Petitioners by the Respondents and, upon considerations of their replies the concerned authorities were not satisfied and concluded that the Petitioners' action were inconsistent and in clear abuse of the powers vested in them and that they had overstepped their authority. It was, therefore, decided that the Petitioners be removed from their Offices under Section 113 of the Act. It is stated that the Respondents had complied with all the procedure established under the Act in removing the Petitioners from their respective posts.

5. I have given thoughtful consideration to the rival contentions placed by the learned counsels, the pleadings and the available records. The Petitioners' case is appears to be restricted to the following questions only:-

- (1) That the impugned Order sub-Section (1) of Section 113 of the Act issued under Notification No.20/RM&DD/P dated 22-03-2011, Annexure P-10, by the Respondent No.1, is invalid as it has been issued merely by an order of the Secretary and not in the name of the Governor; and
- (2) That the decision to remove the Petitioners from their respective posts of Sabhapati and Sachiva of



the Gram Panchayat was disproportionate to the omissions on the part of the Petitioners.

6. During the course of the arguments, Mr. A. K. Upadhyaya, learned senior counsel urged a third contention that the Petitioners were protected under the immunity clause provided under Section 107 of the Act which is an exception under sub-Section (1) of Section 113 thereof.

7(a). The issue raised on behalf of the Petitioners are taken up in *seriatim* as under:-

(b) Contention No.1

(i) I have carefully examined the impugned Notification No.20/RM&DD/P dated 22-03-2011, Annexure P-10, and the Notice bearing Memo No.345/ADC/(D)/(W) dated 06-04-2011, Annexure P-12 (collectively). Annexure P-10 on the face of it clearly shows that it is issued "By Order" which appears before the signature of the Secretary clearly signifying that it has been issued with the approval of the Government. Sub-Section (1) of Section 113 of the Act vests in the State Government with the power to remove any Sabhapati or Up-Sabhapati and Sachiva of Gram Panchayat, etc., from his office. Clause (m) of sub-Section (1) of Section 2 of the Act defines - "State Government" to mean the Government of the State of Sikkim. Therefore, the impugned

Notification cannot be said to have been issued without authority.

(ii) The other Notification impugned in the Writ Petition being Annexure P-12 (collectively) which simply reiterates the fact that the Petitioners have been removed from their respective posts of Sabhapati and Sachiva which my view is quite superfluous and redundant in view of the previous Notification Annexure P-10. Its relevance is only the extent that it calls for a meeting of the Gram Panchayat invoking the provision of Sections 28 and 33 of the Act for election of the Sabhapati and Sachiva. Upon perusal of Sections 28 and 33 of the Act, there is nothing to indicate that the Notification Annexure P-12 (collectively) have been issued unauthorisedly. Except for the vague averment and submission that the Notification is unauthorized having not been issued by the State Government no material has been placed in support of such contention. For convenience, I may reproduce the relevant provisions of the Act below:-

Section 17(1)

"17. (1) Every Gram Panchayat shall, at its first meeting at which a quorum is present, elect one of its members to be the Sabhapati and another member to be the Up-Sabhapati of the Gram Panchayat in such manner as may be prescribed.

....."

Section 28

"28. (1) In the event of removal of a Sabhapati or an Up-Sabhapati under section 27 or

when a vacancy occurs in the office of a Sabhapati or an Up-Sabhapati by resignation, death or otherwise, the Gram Panchayat shall elect another Sabhapati or Up-Sabhapati and the person so elected shall take office forthwith and shall hold such office for the unexpired term of office of his predecessor.

(2) No person who has been removed from office under section 27 shall be eligible for re-election to the vacancy so caused."

Section 33

"33. (1) A Sachiva may, at any time, be removed from office by a resolution of the Gram Panchayat carried by the majority of the members of the Gram Panchayat present at a meeting specially convened for the purpose. Notice of such meeting shall be given to the prescribed authority.

(2) In the event of removal of a Sachiva under sub-section (1) or when a vacancy occurs in the office of a Sachiva by resignation, death or otherwise, the Gram Panchayat shall elect one of its members to be the Sachiva and the person so elected shall take office forthwith and shall hold such office for the un-expired term of office of his predecessor.

(3) No person who has been removed from his office under sub-section (1) shall be eligible for re-election to the vacancy so caused."

Section 107

"107. No suit or other legal proceedings shall lie against a Gram Panchayat or Zilla Panchayat or against any member thereof or any officer or any employee for anything in good faith done or intended to be done in pursuance of this Act or any rules made thereunder."

Section 113

"113. (1) The State Government may, notwithstanding anything contained in sub-section (2) of section 17; sub-section (4) of section 31 and sub-section (2) of section 54, by an order in writing remove with effect from a date to be specified in the order any Sabhapati or Up-Sabhapati or any Sachiva of Gram Panchayat, any Adhakshaya or Up-Adhakshaya or Zilla Panchayat from his office, if in its opinion, he wilfully omits or refused to carry out the provisions of this Act or of any rules or orders made thereunder or abuses the powers vested in him under this Act.

(2) The State Government shall, before making any order under sub-section (1), give to the person concerned an opportunity of making a representation against the proposed order."

(iii) From the above, it can be seen that all vacancies occurring in the Office of the Sabhapati and Sachiva are required to be filled up immediately by election to be conducted by the Gram Panchayat. The removal of the Petitioners being under Section 113(1) of the Act, the consequence provided under Sections 28 and 33 of the Act would naturally apply. The procedure for election as prescribed under Section 17(1) of the Act, therefore, would have to be followed. Therefore, it follows that the election of the Sabhapati and Sachiva or other office bearers of the Gram Panchayat would have to be held in a meeting of a Gram Panchayat.

(iv) Therefore, the action in issuing the impugned Notification, Annexure P-12 (collectively) appear to be in consonance with the provisions of the Act and, therefore, valid in law. The contention, therefore, stands rejected.

(c) Contention No.2

(i) It is seen from the provisions extracted above that the power to remove a Sabhapati and Sachiva or any other office bearer of a Gram Panchayat is vested in the State

Government and, such power may be exercised by the State Government if in its opinion anyone of the office bearers wilfully omits or refuses to carry out the provisions of the Act or of any rules or orders made thereunder or "**abuses the powers vested in him under this Act**". The Act does not define as to what would amount to abuse of powers under the Act. The Legislature appears to have left it upon the State Government to decide on that in exercise of its discretion. In the present case, the action of the Petitioners in causing obstruction to a public servant in exercising his legitimate duties has been construed as abuse of powers by the Petitioners in the capacity of Sabhapati and Sachiva.


(ii) This Court in a proceeding under Article 226 of the Constitution of India is not sitting as a Court of Appeal against the decision of statutory authorities but, is only confined to examine as to whether such statutory authorities have acted without jurisdiction or has exercised its powers arbitrarily, that is, in violation of the laid down procedure and the principle of natural justice, or in violation of any Law or the Constitution. Upon examination of the entire records, the respective pleadings of the parties, their submissions at the bar and the Acts and Rules, the Respondents do not appear to have exercised their powers either in excess or without jurisdiction. The procedure prescribed under the Act and the

Rules appear to have been complied with by issuing the necessary show cause notices and also giving personal hearing to the Petitioners before arriving at the impugned decisions. This Court is not concerned with the decisions taken by the authorities prescribed under the Act but only with the decision-making process. From what have been discussed, the decision-making process appear to have been followed as prescribed under the law and, therefore, it would not be permissible for this Court to interfere with the impugned decisions.

Therefore, the second contention also stands rejected.

(d) Contention No.3

(i) The third contention raised on behalf of the Petitioners during the course of the arguments appear to be clearly mis-construed. Section 107 is a provision which protects the Gram Panchayat or any office bearers or employees for actions taken legitimately under the Act. This provision is an omnibus one and, quite obviously an anti-thesis to Section 113(1) authorizing the State Government to remove such persons in the event of omissions and commissions on their part. This being clear from the plain reading of the provisions, the contention stands rejected accordingly.



8. In view of the above, I do not find anything for this Court to interfere with the impugned decisions.

9(a). In the result, the Writ Petition stands dismissed.

(b). No order as to costs.


(S. P. Wangdi)
Acting Chief Justice
13-09-2011

Index : Yes/No

Internet : Yes/No

