
(1985) 02 OHC CK 0002

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1608 of 1984

Achyutananda Behera

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 20-02-1985

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1985) 59 CLT 319 : (1985) 1 OLR 307

Hon'ble Judges : R.C. Patnaik, J;B.K. Behera, J

Bench : Division Bench

Advocate : P. Kar and D.K. Sahoo, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.C. Patnaik, J.—The petitioner, a village agricultural worker has assailed in this application under Article 226 of the Constitution of India his transfer from Pahanaga in the district of Balasore to Jeypore in the district of Koraput.

2. The petitioner was appointed as a village level worker. (re-designated as village Agricultural worker) in December, 1964 and was posted in the district of Sambalpur. In December, 1965 he was transferred to Balasore. In April, 1976 he was posted in the district of Ganjam. In July, 1977 he was transferred to Bahanaga in the district of Balasore. By order dated 12. 4. 1984 (Annexure-3) he was transferred to Jeypore by the Additional Director of Agriculture and Food Preservation, Orissa, on administrative grounds.

3. The petitioner has assailed the transfer as motivated and mala fide. He has made a grievance that the order of transfer has been made at the behest of Mr. Chintamani Jena, a Member of the Parliament. He has asserted that his transfer to Jeypore, a place 800 K. Ms. away from Bahanaga, has not been in exigency of public service but at the prodding of Mr. Jena.

4. In the return submitted by the opposite parties, it is stated that the transfer

was made at the instance of Mr. Chintamani Jena to whom allegations had been made against the petitioner by some residents of Gundurimara village in the district of Balasore. The opposite parties have annexed the letters of Mr. Jena addressed to the Director of Agriculture, Orissa, as per Annexures-A and B. The complaint made by the villagers to Mr. Jena is annexed to Annexure-1. They have taken a categorical stand that the transfer was on the suggestion of the Member of Parliament on the complaint made to him by villagers.

5. An order of transfer unless infected by malafides or oblique motives is not assailable. The administrator is the best Judge of the exigencies of public service, the interests of administration. Unless fettered by rules or instructions, the jurisdiction of the authority competent to transfer is indisputable. But where the exercise is for collateral purpose or with oblique motives, it is a colourable exercise of power and is mala fide. The burden of establishing a mala fide transfer like any allegation of mala fide is heavy on the person who alleges it. Allegations of mala fide are often made then proved. Mala fides may be established by positive evidence; often an uphill task. Circumstances may, however, irresistibly lead to an inference of mala fide Where the administrator by abdicating his functions acts solely at the behest of an outsider or extra legal agency or authority, the order of transfer would be open to challenge as colourable exercise of power, as mala fide. A transfer would be vulnerable if it is made on political considerations but not on administrative grounds or exigency of public service.

6. It is contended by the learned Additional Government Advocate that the order of transfer as per Annexure-3 is innocuous in nature.. It does not indicate the reason. Hence, it cannot be characterised as mala fide or punitive.

7. The return submitted by the opposite parties furnishes the reason; the insistence of Mr. Jena for the transfer is indicated as the basis. Mr. Jena wrote two letters to the Director of Agriculture, Orissa-One on March 7, 1984 and the other on March 23, 1984. The first letter is to the following effect:

"This is regarding the unsocial activities and involvement in village politics of one Sri Achyutananda Behera, V. A. W. in Basta Block of Balasore District. The enclosed petition of the villagers of Gundurimara village where Sri Behera is a permanent resident, has vividly described the mis-deeds and anti people activities of Shri Behera, which I should not repeat in my letter, to consume your precious time, only except to request you, to kindly pay your personal attention to this matter, so that Shri Behera may be transferred to a distant block, which will debar him to be involved in village politics and creating groupism in the village, which will ultimately harm the progress and developments of the village, as this was a very peaceful village having full unity among the villagers, from the time immemorial.

Soliciting your kind and favourable action in the matter, I remain.

With my personal regards!"

The second letter is as follows :

"Enclosing herewith a petition mentioning serious allegations against Shri Achyutananda Behera, V.A.W. Bahanaga Block of Balasore District, I am to state that I wrote a D.O. letter on this issue to your predecessor after receiving such petition by the villagers, to transfer this V.A.W. in considering his illegal and unlawful activities but of no avail. However, the villagers of Gundurimara village where Shri Behera is a permanent resident, have again brought similar allegations against him, which can be ascertained from the enclosed petition sent herewith, for your kind perusal. It is revealed from the petition that Shri Behera, though serving as a V.A.W. in Sathi G. P. under Bahanaga Block which is situated about 60 to 70 K. M. from his native village Gundurimara under Basta Block of the same Balasore District. But it is very surprising that how this Govt. servant is allowed to come to his village 3-4 days in every week leaving his Headquarters with or without Headquarter's leaving permission, where he is indulging in group politics and other unsocial activities.

However, being a Govt. servant, he is creating hindrances in the village unity and peaceful atmosphere which was there from the time immemorial, he should not be allowed to continue in his home district, Balasore and if transferred to a distant place, he will not have the scope to come to his home, so frequently, to create disturbances in his native village, which is hampering the developmental works in the village.

In considering the serious charges brought against the V.A.W., I would request you to kindly pay your personal attention to this matter and please exercise your good offices, so that this V.A.W. may be transferred outside his home district soon, so that he may not be able to indulge in village politics which is creating disturbances on the peaceful atmosphere in the village as well as co-existence, for which act of your kindness and sympathy, the villagers shall remain ever grateful to you.

Soliciting a very early favourable orders from your end, I remain. With thanks;"

(Underlining supplied)

8. Allegations are sometimes made maliciously or recklessly . Sometimes they are founded on baseless gossip. With the inroad of politics into various strata of society, it is not seldom that allegations are politically motivated. Therefore, when allegations are levelled against an employee, it is desirable, nay imperative, that the administrator should himself ascertain the truth and act on his own satisfaction that the circumstances warrant a transfer.

9. Any citizen can plead before an administrator for redress of his personal grievances or the grievances of the public at large, for pushing through the various schemes and projects, for social welfare programmes. Who can better serve as a spokesman than a legislator, an elected representative of the people. ? He is not only a law maker but a spokesman of the people inside the

legislature and outside it. He can plead, canvass and claim for the people and in the public interest. But it should not be lost sight of that there exists clear distinction between pleading, canvassing and claiming on the one hand and interference on the other. The respective jurisdictions of the legislator and the administrator are well defined. It is not permissible for one to cross the boundary and trespass into the jurisdiction of the other. Much of the bane of the present administration is due to the breach of the rule ; due to politicisation of administration, interference of politicians in matters of transfer, investigations and arrest of offenders etc.

10. Coming to the facts on hand; certain complaints were received by Mr. Jena. His letters do not reveal that he made any enquiry himself to ascertain the truth. Nevertheless he acted on the complaints made to him by villagers. It could be that the allegations were untrue, politically motivated or malicious. It could be that the petitioner was an impediment to the unsocial activities for some villagers. He might have raised his voice of protest against their unholy combination. It could be that he belonged to a different political persuasion and hence his presence in the locality was inconvenient for them. Many hypothetical situations can be thought of. It, therefore, behoved the administrator to bring to hear his independent mind on the facts and circumstances of the case, that would have been fair play in action. If the administrator was satisfied that the petitioner had indulged in undesirable activities or was negligent in discharge of his functions or that his presence at the station was detrimental to the interests of the administration and was not in public interest, he had undoubted jurisdiction to shift the petitioner. Here, the administrator did not apply his mind at all. No endeavour was made to ascertain the truth. He acted on the prodding of the legislature who had in turn acted on the complaint of some villagers. There was, therefore, absence of exercise of jurisdiction by way of abdication thereof. He even acted on the dotted lines. The petitioner was shifted to Jeypore in Koraput District (a distant place as suggested by Mr. Jena) about K. Ms. away. The transfer was, therefore, mala fide we quash the same. We make it clear that our quashing of the order c? transfer aforesaid, does not prevent the authorities from taking such action as they consider proper if they are satisfied that the continuance of the petitioner at Bahanaga is not in public interest or in the interest of administration.

With the aforesaid observations, we allow the writ application. There would be no order for costs.

B.K. Behera, J.

11. I agree.