
(2006) 05 OHC CK 0067
In the Orissa High Court
Case No : Writ Petition (C) No. 12808 of 2005

Babula Dehuri and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 15-05-2006

Acts Referred:

Orissa Grama Panchayat Act, 1964 — Section 3, 4

Citation : (2006) 05 OHC CK 0067

Hon'ble Judges : N. Prusty, J; I.M. Quddusi, J

Bench : Division Bench

Advocate : Manomay Basu, A.P. Mishra, S. Debdas and G.N. Sethi, for the Appellant;

Final Decision : Dismissed

Judgement

I.M. Quddusi, J.—This is the third round of litigation of the Petitioners in respect of fixation of headquarters of the Gram Panchayat from village Patisari under Jamunadeipur Revenue village in the district of Mayurbhanj.

2. Some persons who had filed writ application registered as W.P.(C) No. 4021 of 2002, later on became intervenors in subsequent writ application, i.e. W.P.(C) No. 1268 of 2003, filed by one Jagannath Marandi, Sarpanch of Patisari Gram Panchayat.

3. In W.P.(C) No. 4021 of 2002 which was disposed of vide order dated 13.2.2004, this Court had observed as under:

Without expressing any opinion on the merit of the claim, we dispose of this writ petition with direction that if any such appeal is pending, the Collector may consider and dispose of the same according to law by the end of January, 2003

4. Thereafter W.P.(C) No. 1268 of 2003 filed by the Sarpanch was disposed of vide order dated 13.2.2004 with the observation that the Sub-Collector was changing his report from time to time regarding shifting of headquarters of the

Gram Panchayat and the reasons for such changes in the report were not explained and it was not prudent to rely upon the report submitted by him and, therefore, while disposing of the writ application, a direction was issued to the Collector, Mayurbhanj to conduct an enquiry personally as directed by this Court earlier in W.P.(C) No. 4021 of 2002 and come to a conclusion as to which among the two villages, i.e. Patisari and Balichilima Chhak under Jamunadeipur revenue village is the right place to locate the headquarters of Patisari Gram Panchayat. It was further observed that the decision should be taken keeping in mind the aims and objectives of the Gram Panchayat Act, more specially, the provisions of Sections 3 and 4 of the said Act, which stipulates that the headquarters should situate in a village bearing the name of a Grama. It was also directed that it would be open for the Collector to provide opportunity to the parties to raise their contentions.

5. Thereafter the Collector conducted the enquiry on 7.8.2004 and submitted his report to the State Government. He had given intimation to Sarpanch requiring all ward members to be present during enquiry. The Sarpanch, Naib Sarpanch, all members were present. Out of eleven members of the Gram Panchayat, only seven were in favour of the headquarters at Balichilima Chhak. But the Collector himself considered the situation to the effect that the Patisari Grama Panchayat comprises seven revenue villages, namely; Adidiha, Jamunadeipur, Brahmapura, Beguniabani, Kanhupura, Tentuligaon and Patisari. Information collected from the Tahasil office, Badasahi revealed that the distance between village Patisari and Adidiha, Jamunadeipur, Brahmapura, Beguniabani, Kanhupura and Tentuliagaon is 5 Kms., 1 Km., 1 Km, 3 Kms, 4 Kms. and 4 Kms. respectively and on the other hand, the distance between Balichilima Chhaka (Revenue village Jamunadeipur) and Adidiha, Patisari, Brahmapura, Beguniabani, Kanhupura and Tentuligaon is 4 Kms., 1 Km., 1 1/2 Kms. 2 1/2 Kms. and 2 1/2 Kms. respectively. Accordingly the Collector had opined that the above distance factor clearly suggests that Balichilima Chhaka is more centrally located than village Patisari as far as accessibility of the Grama Panchayat headquarters is concerned. Besides, Balichilima Chhaka is situated just on the side of the P.W.D. road leading from Badasahi to Khunta, whereas the village Patisari is situated 1 Km. in the interior along a village road and is not accessible as well as Balichilima Chhaka is.

6. We have noticed that Balichima is not a village but it is a Chhaka (place) in revenue village Jamunadeipur which is connected with village road as well as the P.W.D. road.

7. In the case of Asif Hameed and others Vs. State of Jammu and Kashmir and Others, , it has been held that while exercising power of judicial review of administrative action, the Court is not an appellate authority. The Constitution does not permit the Court to direct or advise the executive in matters of policy or to sermonize qua any matter, which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory power.

8. In a recent decision of the Hon''ble Apex Court in the case of Union of India and Ors. v. Flight Cadet Ashish Rai, reported in 2006 (1) Supreme 271, the Apex Court held that there should be judicial restraint while making judicial review in administrative matters. The principles laid down there in respect of judicial review are as under:

The duty of the Court is (a) to confine itself to the question of legality; (b) to decide whether the decision making authority has exceeded its powers (c) committed an error of law (d) committed breach of the rules of natural justice and (e) reached a decision which no reasonable Tribunal would have reached or (f) abused its powers.

9. The Collector, Mayurbhanj considering every aspect of the matter as well as the geographical conditions submitted his report to the Government to continue Balichilima Chhaka as the headquarters of Jamunadeipur revenue village of Patisari Gram panchayat. Accordingly the Government of Orissa in panchayati Raj (G.P.) Department issued a direction that the headquarters of the village shall continue at Balichilima Chhaka.

10. In the instant case, it cannot be said that the Collector while submitting his report to the State Government regarding fixing of headquarters of Gram Panchayat has committed any illegality or exceeded his power or acted against the principle of natural justice.

In view of the above, the writ application lacks merit and is, therefore, dismissed in limine.

N. Prusty, J.

11. I agree.