
(2000) 12 OHC CK 0031
In the Orissa High Court
Case No : O.J.C. No. 8451 of 1995

Bijay Kumar Behera and others	Vs	APPELLANT
State of Orissa and others		RESPONDENT

Date of Decision : 11-12-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa Grama Panchayat Act, 1964 — Section 149, 3, 4, 4(3)

Citation : AIR 2001 Ori 164 : (2001) 91 CLT 249 : (2001) 1 OLR 168

Hon'ble Judges : P.K. Mohanty, J;A.S. Naidu, J

Bench : Division Bench

Advocate : M/s S. Mishra-2, S. Mantry and A.K. Sharma, for the Appellant;
Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

A.S. Naidu, J.—Petitioners are the inhabitants of different villages under Purushottampur Gram Panchayat of Balasore district. They have filed the present writ application, inter alia, challenging the Notification dated 5-9-95 (Annexure-9) issued by the Government of Orissa, Panchayati Raj (G. P) Department directing that the office, and headquarters of the Grama Sagan of Giaroa "Purushottampur" in Basta Block of Balasore district constituted under the notification of the Government in Panchayati Raj (G P.) Department No. 6881 dated the 25th March, 1992 shall be situated in village "Purushottam-pur" within the limits of the said Grama,

2. The dispute has a chequered career inasmuch as this is the third writ application filed before this Court. Bereft of all the unnecessary details, the short facts of the case are that initially under Basta Block, there was a Grama Panchayat called as "Natakata Grama Panchayat". The State Government taking into consideration the geographycal condition as well as population growth, by Notification dated 31-12-1991 in exercise of the power conferred by section 3 read with section 149 of the Orissa Grama Panchayat Act, 1964 (Orissa Act 1 of

1965) (hereinafter referred to as "the Act") bifurcated the said Natakata Grama Panchayat into two i.e. Natakata Grama Panchayat and Purushottampur Gram Panchayat. The said notification further stipulated that the headquarters of Purushottampur Gram Panchayat shall be located at Purushottampur. It is averred, in the writ application, that Purushottampur Gram Panchayat constituted of 14 villages and fixing of the headquarters at Putushottam-pur village, which is towards the extreme end of the Gram Panchayat became inconvenient to villagers of most of the villages. A representation was filed by the villagers before the Government, inter alia, praying to shift the headquarters of Purushottampur Grama Panchayat from village "Purushottampur" to village "Panisapada". The Government in Panchayat Raj Department, called for reports from the Block Development Officer and the Collector of the district. The authorities after conducting inquiry at the field, intimated the Government that the village Panisapada is well communicated and centrally placed. It was further intimated that the communication facilities to village Panisapada is convenient and that there are sufficient public land available for future development of the Grama Panchayat. The Government of Orissa in Panchayat Raj (G. P.) Department after taking into consideration the reports submitted by the Block Development Officer as well as the Sub-Collector (Annexure-2) and after fulfilling all paraphernalias, in exercise of powers conferred under sub-section (3) of section 4 of the Act issued a notification directing that the office and headquarters of Grama Sasan of Grama "Purushottampur" in Basta Block of Balasore district constituted under the Notification of the Government in Paichayati Raj (G. P.) Department No. 6881 dated the 25th March, 1992 shall be situated in village "Panisapada" within the limits of the said Grama. The said notification was issued on 6th November, 1993 vide Annexure-4.

3. Being aggrieved by shifting of the headquarters from village "Purushottampur" to village "Panisapada", some of the villagers of village "Purushottampur" approached this Court in O.J.C. No. 9026 of 1993, inter alia, praying to quash the notification dated 6-11-93 which was annexed as Annexure-3 to the said writ application. This Court disposed of the writ application on 25-11-93 with the following directions .

"On consideration of the submissions made, we are not inclined to entertain this writ application at this stage. In our view the petitioners should approach the State Government with their grievance. If the petitioners file representation before the Secretary, Panchayati Raj (G. P.) Department within one month, the said authority will consider the same and disposed of it by passing a reasoned order within three months from the date of its receipt."

4. In consonance with the directions issued by this Court, referred to above, the villagers of Purushottampur filed a representation before the Government and the Government of Orissa in Panchayati Raj (G. P.) Department, disposed of the representation by its office order dated 25-2-1994 (Annexure-8) holding as follows :

"Now therefore, after careful consideration of the said representation, the State Government have been pleased to reject the same and ordered to continue headquarters of the Grama at Panisapada for the reasons enumerated below ".

(i) that the village "Panisapada" is most centrally located and its border touches 8 out of 13 villages including Purushottampur.

(ii) that more infratructure facilities are available in the village Panisapada for being the headquarters of the Grama."''

It is further averred in the writ application that after disposal of the representation, the Block Development Officer, Basta called for tender and entrusted the woik of construction of the Grama Panchayat building at Panisapada vide Annexure-5. It is further averred that Grama Panchayat Office of Purushottampur Grama Panchayat was constructed at Panisapada village and was inaugurated by the then Collector and the local M.L.A, Basta on 13-12-1994. Photographs of the office building as well as inaugural stone are filed vide Annexures-6 and 7 to the writ application. In support of their stand that village Panisapada is centrally located and that the village Purushottampur is at the extreme end of the Grama Panchayat, a village map has been filed and marked as Annexure-3. Perusal of the said map which corresponds to the map annexed to the counter filed by the State Government as Annexure-A/1 clearly reveals that the reasonings given by the Block Development Officer while recommending to locate the headquarters and office at village Panisapada as well as the ground for rejection of the representation filed by the villagers of Purushottampur village (Annexure-8) by the Government are just and proper. It is further averred in the writ application that though the headquarters of Purushottampur Grama Panchayat was functioning smoothly at village Panisapada as per the decision of the Government, after the general election, the Ex-Sarpanch of Purushottampur Grama Panchayat put political pressure to shift the headquarters of the Grama Panchayat once again from village Panisapada to village Purushottampur. The Government without any justifiable reason succumbed to the pressure and issued the notification on 5-9-95 (Annesure-9) in purported exercise of powers conferred under sub-section (3) of section 4 of the Act and ordered that the office and the headquarters of the Grama Sasan of Grama "Purushottampur" of Balasore district shall be situated in village Purushottampur within the limits of said Grama. The said order, as has been stated earlier, is impugned in the present writ application on the ground that there is no justification for issuance of such notification and that the order has been passed arbitrarily and on extraneous considerations, without due application of mind to relevant materials.

5. It is pertinent to mention here thas another writ application being O. J. C. 2030 of 1994 was also filed by the village Purushottampur, inter alia, challenging the Government order of rejecting the representation dated 25-2-94 in consonance with the order dated 25-11-93 passed by this Court in O. J. C. No, 9026 of 1993. The order of rejection dated 25-2-94 was filed in the said writ application as Annexure-14 which is annexed as Annexure-8 to the present writ

application. However, during the pendency of the O. J. C. No. 2030 of 1994, the Government issued the notification dated 5-9-1995 (Annexure-9) directing that the headquarters of Purushottampur Grama Panchayat will be located at village Purushottampur and the said notification dated 5-9-1995 was brought to the notice of this Court in course of hearing of O. J. C. No. 2030 of 1994 on 26-9-95 and the writ application was disposed of with the following observations :

"Heard Mr. Nayak for the petitioners and the learned Addl. Government Advocate. Our attention is drawn to the notification dated 5-9-95 of the Government in the Panchayati Raj (G. P) Department, a copy whereof is kept on record. It appears that the notification fulfils the grievances of the petitioners. Recording such submission, we disposed of the writ application."

6. A counter affidavit has been filed by opp. parties 2 to 5, sworn to by the B. D. O., Basta. In paragraph-3 of the counter affidavit, it is stated that it is the domain of the Government to have the headquarters of a Grama Panchayat at a particular village keeping in view the requirements and in the larger interest of the public with the true spirit of the statutory requirements and it is not open to challenge unless it is established that the Government's action is arbitrary and tainted with mala fides. It is further averred that on the basis of a resolution passed by the Grama Panchayat resolving to shift the headquarters of the Grama Panchayat from village Panisapada to village Purushottampur and on the basis of the reports of the district officers, the Government was pleased to shift the headquarters of the Grama Panchayat from village Panisapada to village Puruttampur. It is further averred that though the headquarters of Purushottampur Grama Panchayat was located at Panisapada village, the Grama Panchayat office, in fact, has been functioning at Purushottampur. In support of their stand, the resolution dated 29-7-95 has been filed as Annexure-A/5 to the counter.

7. The stand taken in the counter affidavit that the Grama Panchayat office is not situated at Panisapada, but at village Purushottampur is found to be not correct on a perusal of the information furnished by the Collector, Balasore vide his letter dated 2-8-95 a copy of which is annexed as Annexure-B/5 to the counter affidavit. The Collector, Balasore in reply to the query has intimated as follows :

(i) If office building of the G. P. has been constructed in the meanwhile ?

Ans : One building has been constructed for the purpose of G. P. Office.

8. Another counter affidavit has been filed on behalf of opp. party No. 1 which is sworn to by the Under Secretary to the Government of Orissa, Grama Panchayat Department. It is stated in the counter affidavit that the stand taken by the petitioners that the village Panisapada is centrally located, is not correct. This plea also appears to be an after-thought specially in view of the fact that while disposing of the representation, the State Government has specifically held that the village Panisapada is most centrally located and its border touches 8 out of 13 villages, as would be evident from Annexure-8. Further the map Annexure-4

which is same as Annesure-A/1 to the counter affidavit, reveals the location of both the villages, and falsifies the stand taken by the opp. patties.

9. A rejoinder affidavit has been filed on behalf of the petitioners controverting the averments made in the counter affidavit. It has been emphatically reiterated that the Grama Panchayat office was constructed at Panisapada village and the same was functioning there. In support of the said stand, apart from relying upon the photographs of the office building and the inauguration stone (Annexures 6 & 7), the petitioners have filed the tour programme of the Minister, Panchayati Raj (G P.) Department (Annexure-10) which clearly reveals that on 14-2-94, the Minister visited the construction site of Purushottampur Grama Panchayat and addressed a public meeting at Panisapada. The letter issued by the Personal Assistant to the Minister, Panchayati Raj to the M. L. A , Basta indicating the said fact, is filed as Annexure-10/A. The petitioners have also reiterated their stand that village Panisapada is centrally located and is most convenient to hold the headquarters of Purushottampur Grama Panchayat.

10. On being called upon, the learned Addl. Government Advocate produced the relevant file. Perusal of the file do not reveal any compelling circumstance which made the Government to change their earlier decision and direct shifting of the head quarters of Purusbottampur Grama Panchayat from village Panisapada to village Purushottampur. On the other hand, the notings in the file reveal that the authorities all along opined that the village Panisapada is centrally located and is convenient to be the headquarters of the Grama Panchayat and supported the earlier decision of Government shifting the headquarters from Purushottampur to village Panisapada as well as the reasons assigned by the Government while rejecting the representation filed by the village (Annexure-8).

11. Section 4 of the Orissa Grama Panchayat Act deals with constitution and incorporation of Grama Sasan. Subsection (3) of section 4 of the Act reads as follows :

"Section 4(3) : The office and headquarters of the Grama Sasan shall be situated within the limits of the Grama and unless otherwise ordered by the State Government in the village bearing the name of the Grama "

12. The short question that arises for consideration is whether the order of the State Government deciding to change the headquarters of Purushottampur Grama Panchayat from village Panisapada to village Purushottampur is a bona fide order and the same has been issued after taking into consideration all relevant factors, keeping the paramount interest of the inhabitants of the Grama at large in mind or it is merely a colourable exercise of power not supported by any materials and has been arbitrarily passed by the State Government on extraneous grounds. The power to constitute a Grama and to assign a name to such Grama is derived from section 3 of the Orissa Grama Panchayat Act, No guideline has been fixed in section 3 for the purpose of assigning any name to a group of contiguous villages and therefore, it is the discretion of the State

Government to constitute a group of contiguous villages as a Grama and to assign such Grama a name which shall be one of the village comprised within the Grama. Section 4(3) stipulates that the headquarters shall be situated within the limits of the Grama and unless otherwise ordered, in the village bearing the name of the Grama. Thus, the discretion vests upon the Govt. to locate the headquarters. But that discretionary power has to be exercised, on relevant considerations germane to the issue and cannot be permitted to be exercised on extraneous considerations. Though the Court is restrained to interfere with the discretion exercised by the State Government so long as the said discretion is exercised bona fide, but it would be fully entitled to interfere when it comes to the conclusion that the discretion has been exercised arbitrarily basing on extraneous considerations or has been exercised ignoring the relevant materials. Absence of any mode or guideline does not vest unfettered power upon the Government. On scrutiny of the documents available, if it is found that the Government while exercising the discretionary power has decided the matter without application of mind to relevant materials and/or has taken into consideration matters which are extraneous and not germane to the object, the writ Court in exercise of powers under Article 226 of the Constitution of India can interfere with such decision. Within the aforesaid narrow compass, the action of the State Government under Annexure-9 has to be adjudged.

13. We have carefully gone through the averments made in the writ application, counter affidavits and the rejoinder affidavit. We have also gone through the relevant file produced before us. Perusal of Annexures 2, 3 and 4 as well as notings made in the file, clearly reveals that the Government after considering all factors as well as examining the reports submitted by the local B.D.O. and the Sub-collector, was pleased to exercise the power under sub-section (3) of section 4 of the Act and shifted the headquarters of Purushottampur Grama Panchayat from village "Purushottampur" to village Panisapada vide the Notification dated 6th November, 1993 (Annexure-4). The said decision of the Government was impugned before this Court in O.J.C. No. 9026 of 1993. In consonance with the direction issued by this Court, the matter was once again examined threadbare by the Government and by a reasoned order, the representation filed by the villagers of Purushottampur village was turned down in the year 1994 (Annexure-8). The reasonings for arriving at such a decision are two folds i.e. (i) that the village Panisapada is most centrally located and its border touches 8 out of 13 villages including [the village Purushottampur and (ii) that more infrastructure facilities are available at village Panisapada. In consonance with the said decision, at the cost of the exchequer, office building of Purushottampur G. P. was constructed at Panisapada which was inaugurated by the Collector and the Bhumipuja was attended by the Minister. No reasons whatsoever have been indicated to justify the later decision to change the headquarters once again from Panisapada to village Purushottampur. The reasons for which the headquarters was shifted from Purushottampur to Panisapada village as justified by the Government in their order vide Annexure-8 has not been varied nor the

topographical situation of the Grama has undergone any change in the meanwhile. The stand taken in the counter affidavit are contrary to the reasons assigned while disposing of the representation filed by the villagers of Purushottampur village vide Annexure-8, Not an iota of material has been brought to our notice to support the decision to reshift the headquarters of Purushottampur Grama Panchayat from Village Panisapsda to village Purushottampur. The only reason assigned is that a resolution was passed by the Grama Panchayat. The resolution of the Grama Panchayat depends upon the change of political scenario. The power to change the headquarters of a Grama Panchayat squarely vests on the Government and not on Grama Panchayat. Such power cannot be exercised in whimsical manner and has to be exercised keeping in mind the interest of common populous. The Government in its wisdom, after conducting local enquiry and after being satisfied that village Panisapada is most centrally located and is convenient to the inhabitants of most of the villagers and that more infrastructural facilities are available at Panisapada, decided to shift the headquarters of Purushottampur G. P. from Purushottampur to Panisapada in the year 1993. We find no rhyme or reason to change the said decision once again in the year 1995 by the impugned order Annexure-9. It is undoubtedly true that power lies with the Government to take appropriate decision, but while taking a decision, the Government must consider all the relevant facts. The convenience of the local inhabitants of the village is the paramount consideration while locating the headquarters of a Grama Panchayat.

14. Not only the State Government after conducting local enquiry through B. D. O. and Sub-collector in 1993 (Annexure-4) directed to locate the headquarters at Panisapada but also by a reasoned order in consonance with the direction issued by this Court in O. J. C. No, 9026 of 1993 supported the stand that the village Panisapada is most suitable village where the headquarters of Purushottampur G. P. is to be located. The only reason assigned in support of change of their earlier decision is that Grama Panchayat has resolved to change the headquarters and that though Panisapada was the headquarters of Purushottampur Grama Panchayat, the same was functioning at Purushottampur. The second reason is not correct as would be evident from numerous documents filed before us i. e. Annexures 5, 6, 7 and Annexure-B/5 i. e. the report of the Collector which clearly indicates that Grama Panchayat office building is situated at Panisapada. These documents coupled with the tour diary of the Minister (Annexure-10). leads to an irresistible conclusion that the office of Purushottampur G. P. is located at Panisapada and not at Purushottampur village. Further, the G. P. has no role to play in deciding as to where the headquarters of the Grama will be situated and it is the exclusive domain of the Government.

15. In the aforesaid premises, in our considered opinion, the decision of the Government vide Annexure-9, once again shifting the headquarters of Purushottampur G. P. from village Panisapada to village Purushottampur is based on irrelevant and extraneous consideration and the same is not only arbitrary but also contrary to the public interest and the said order is nothing, but colourable

exercise of power, not structured by any rational consideration.

16. In view of the aforesaid conclusion, we have no hesitation to quash the Notification under Annexure-9. Necessarily, therefore, the Notification under Annexure-4 dated 6-11-1993 remains valid and operative.

17. The writ application is, accordingly, allowed. However, there is no order as to costs.

P.K. Mohanty, J.—I agree.

2. Writ application allowed.