

(1991) 05 OHC CK 0034

In the Orissa High Court

Case No : Original Jurisdiction Case No. 5119 of 1990

Dharmananda Behera and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 14-05-1991

Acts Referred:

Orissa Grama Panchayat Act, 1964 — Section 146, 61

Citation : (1991) 2 OLR 26

Hon'ble Judges : R.C. Patnaik, J;D.M. Patnaik, J

Bench : Division Bench

Advocate : S.P. Misra and A.R. Das, for the Appellant; S.K. Das, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.C. Patnaik, J.—This is an application by the villagers of Bhagatpur within the limits of Kanheipur Gram Panchayat assailing the decision of the Government as conveyed by letter dated 10-10-1990 Annexure-3 that both the cattle markets at Tangi (Kotsahi Gram Panchayat) and the Bharatpur cattle market within Kanheipur Gram Panchayat may sit on the same day of the week, i.e., Tuesday.

2. Protracted controversy between the Kanheipur Gram Panchayat and Kotsahi Gram Panchayat was resolved by the Collector, Cuttack, on an appeal u/s 146(2) of the Orissa Gram Panchayat Act which was filed against the decision dated 23-3-1978 of the Tangi Choudwar Panchayat Samiti. He decided in G. P.- Appeal No. 7 of 1978 after hearing the both sides and taking into consideration the facts and circumstances that Tangi cattle market should operate on a day other than Tuesday and Bharatpur cattle market should operate on Tuesday as usual. Writ applications (OJC Nos. 2483/83 and 1196/84) filed in this Court assailing the decision of the Collector was dismissed and the cattle markets were functioning since then in accordance with the decision of the Collector. By the impugned order Annexure-3, the Government has approved the proposal of the Collector, Cuttack, permitting both the cattle markets to operate on Tuesday.

3. The aforesaid decision of the Government has been assailed as ultra vires and is contrary to statutory decision rendered by the Collector, Cuttack.. It is submitted that if circumstances justified or there are change of situation, it was open to the contending parties to raise a dispute and seek its settlement in a manner- provided by law, i.e., the provisions contained in the Orissa Gram Panchayat Act. But the State Government had no jurisdiction to issue a fiat directing that both the markets could operate on Tuesday nullifying the decision of the Collector, Cuttack, rendered under the statute especially when that decision of the Collector was not interfered with by the High Court in the two writ applications, referred to above. In the counter affidavit filed pursuant to notice, the State Government has justified action in purported exercise of powers vested in it u/s 61 of the Orissa Gram Panchayat Act. It has been averred that u/s 61 the State Government is the final authority in case of any dispute arising in a Gram Panchayat about the settlement of market in its area.

4. In our view, the State Government wholly misconceived the scope and ambit of Section 61 and misconstrued the provisions with a view to conferring power on itself. Section 61 for convenience is extracted below :

"Decision of disputes as to whether places are markets.

If any question arises as to whether any place is a market or not, the Gram Panchayat shall make a reference thereon to the State, Government and their decision thereon shall be final."

The heading of the section succinctly delineates the nature and scope of Section 61. When there is a dispute as to whether or not a place located within the Gram Panchayat is a market the State Government is clothed with jurisdiction to decide the dispute only on a reference by the Gram Panchayat concerned. Hence the dispute as to whether two Gram Panchayats operating market in their respective areas could operate a market on the same day or on different days was beyond the ambit of Section 61. Provisions contained in Section 61 are so clear that it is even difficult to misconstrue and misunderstand its ambit and scope, Reliance, therefore, on Section 61 is wholly untenable.

5. Dispute of the nature with which we are seized comes within the ambit of Section 146. Because here is a dispute between two Gram Panchayats as to the operation of markets located in their respective areas. Such dispute could only be resolved in the manner prescribed. The State Government had no jurisdiction to take a decision in the manner it has done. The exercise of powers, therefore appears to be arbitrary and unsustainable. We therefore, quash Annexure-3 and allow the writ application. No costs.

D.M. Patnaik, J.

6. I agree.