
(2015) 01 OHC CK 0021
In the Orissa High Court
Case No : Writ Petition (C) No. 21088 of 2013

Keshab Sahukar

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 09-01-2015

Acts Referred:

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

Citation : (2016) 121 CLT 152 : (2015) 1 ILR Ori 570

Hon'ble Judges : C.R. Dash, J.

Bench : Single Bench

Advocate : Umesh Ch. Mohanty, T. Sahoo, B.K. Swain and B. Behera, for the Appellant

Final Decision : Dismissed

Judgement

C.R. Dash, J.—The petitioner, who is a denizen of village Saradhapur in the district of Rayagada and ex-Panchayat Samiti Member, has filed this writ petition praying to quash the office Notification dated 28.08.2008 (Annexure-1), order dated 20.08.2013 (Annexure-5) and recommendations of the Sub-Collector, Gunupur dated 21.06.2001 (Annexure-7). Further the petitioner has prayed for issuance of a direction to opposite party Nos. 1 to 3 to allow functioning of the Headquarter of Saradhapur Gram Panchayat at village Saradhapur.

2. The facts relevant for disposal of the writ petition are as follows:--

"Laxmipur Gram Panchayat was created on 10.03.1966 vide Notification No. 3706 dated 10.03.1966 issued by the Government in Panchayatraj Department, Odisha after bifurcation of aforesaid Laxmipur Gram Panchayat from Jagadalpur Gram Panchayat. Laxmipur Gram Panchayat after its creation vide its Resolution No. 6 dated 20.06.1977 resolved to function the Gram Panchayat Office at Saradhapur village for the time being till construction of Gram Panchayat Office at Laxmipur. Subsequently recommendation was made by the Sub-Collector, Gunupur for re-shifting of the Gram Panchayat Headquarter from Saradhapur

village to Laxmipur village with justification vide Letter No. 6109 dated 21.06.2001 (Annexure-7). Basing on the said recommendation of the Sub-Collector, the Collector, Rayagada had submitted a proposal to the Government in Panchayatraj Department, Odisha for considering re-shifting of the Gram Panchayat Headquarter from village Saradhapur to village Laxmipur vide its Letter No. 693 dated 24.07.2001 (Annexure-A/2 to the counter affidavit filed by opposite party Nos. 2 and 3). In exercise of power conferred under Sub-Section 3 of Section 4 of the Orissa Gram Panchayat Act, 1964, the State Government passed order to the effect that the Headquarter of the Grama Sasan (Gram Panchayat) of village Saradhapur in Muniguda Block of Rayagada district shall be situated in village Laxmipur within the limits of the said Grama, vide Notification No. 35510/PR, dated 28.08.2008 (Annexure-1)." 3. The present petitioner and other villagers of village Saradhapur filed a representation before the appropriate Government not to shift the Headquarter of the Gram Panchayat from village Saradhapur to village Laxmipur. When no action was taken on the said representation, the villagers of Saradhapur Gram Panchayat were constrained to file writ petition, i.e. W.P. (C) No. 13794 of 2008 before this Court. This Court disposed of that writ petition on 13.03.2013 with the following order:--

"Though notice was issued to Opposite Parties No. 7 and 8, copies have already been served on Opposite Parties No. 1 to 6, who are government officials, no counter is forthcoming from their side till date. However, learned Standing Counsel submitted that instruction given by the Opposite Party No. 4 is not clear.

Considering the above facts and circumstances of the case, this court disposes of the writ petition with a direction to the Opposite Party No. 4, Collector-cum-District Magistrate, Rayagada to convene a general meeting of both the villages and discuss the proposal for shifting of the Headquarters of the Grama Panchayat in the interest of the local people and the resolution to be passed in the said meeting shall be communicated to Opposite Party No. 3, Secretary, Panchayatiraj Department, Bhubaneswar, who will take a final decision in the matter of shifting of Headquarters of the Grama Panchayat keeping in view the provision contained under Section 4(3) of the Act.

The above exercise shall be completed within a period of three months from the date of production of a certified copy of this order.

Till a decision is taken, status quo as on today, with regard to the Headquarter at Saradhapur Gram Panchayat under Muniguda Block in the district of Rayagada shall be maintained by the parties."

4. In compliance of the aforesaid order, the District Administration, Rayagada convened a general meeting on 22.05.2013 of both the villagers of Saradhapur and Laxmipur and discussed over the proposal of shifting the Gram Panchayat Headquarter from Saradhapur to Laxmipur. The villagers of both the villages put forth their views in support of their demands and canvassed to the hilt that the Headquarter of the Gram Panchayat should function in their respective villages.

In the said meeting 214 persons from village Saradhapur cast their vote in favour of existence of the Gram Panchayat Headquarter at village Saradhapur and 62 persons of Laxmipur present in the meeting cast their votes in favour of shifting of the Gram Panchayat Headquarter to Laxmipur. The detailed report in this regard was sent to the Government in Panchayatraj Department vide Office Letter No. 475 dated 10.06.2013 (Annexure-C/2 to the counter affidavit filed by Opp. Party Nos. 2 and 3). After taking into consideration the report of the Collector dated 21.06.2001 (Annexure-7) for shifting of the Gram Panchayat Headquarter from village Saradhapur to village Laxmipur, the report of the meeting held pursuant to the order of this Court in W.P. (C) No. 13794 of 2008 submitted to the Government vide Annexure-C/2, Sketch Map of the entire Gram Panchayat area, etc., the notification dated 20.08.2013 vide Annexure-5 was issued by the Government in Panchayatraj Department (opp. party No. 1) for shifting of Saradhapur Gram Panchayat Headquarter to village Laxmipur.

5. Notification of the Government, vide Annexure-5 is impugned in this writ petition on the following grounds:--

"(i) In breach of the direction of this Court in W.P. (C) No. 13794 of 2008, the general meeting of both the villagers of village Saradhapur and Laxmipur was held under the Chairmanship of Sub-Collector, Gunupur instead of Collector-cum-District Magistrate, Rayagada.

(ii) When majority people of village Saradhapur, i.e. 214 persons have cast their votes against shifting and only 62 persons of village Laxmipur have voted in favour of the shifting, it is to be held that the Government in issuing the Notification dated 20.08.2013 vide Annexure-5 has not taken into consideration the majority view.

(iii) The decision of the Government vide Annexure-5 is otherwise arbitrary and violative of Section 4(3) of the Orissa Gram Panchayat Act, 1964."

6. Learned Additional Govt. Advocate and learned counsel for other private opposite parties, in unison, support the impugned Notification vide Annexure-5 and submit that the Government in Panchayatraj Department has taken into consideration all the aspects including the topography, situation of village Laxmipur at the central location, etc. including the report of the District Administration vide Annexure-C/2 before issuance of the Notification vide Annexure-5 and there is no illegality in issuing the said Notification.

7. Sub-Section (3) of Section 4 of the Orissa Gram Panchayat Act, 1964 reads as follows:--

"(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." Interpreting the aforesaid provision, this Court in the case of Sarpanch, Allaori G.P. and Others Vs. State of Orissa and Others--> , has held that, ordinarily the Headquarter of the Gram

Panchayat should be fixed in the village bearing the name of the Grama. In appropriate case, it can be fixed in some other village. Almost same is the view of this Court in the case of *Pedenti Malana and Others Vs. State of Orissa and Others*, . So far as the power of the Government to locate the Headquarter of a Gram Panchayat is concerned, this Court in a catena of decisions has held that such power is an administrative power of the Government. This Court, in the case of *Bijay Kumar Behera and others Vs. State of Orissa and others*, , has held that discretion is vested upon the Government to locate the Headquarter of the Gram Panchayat. That discretionary power has to be exercised on relevant consideration germane to the issue and cannot be permitted to be exercised on extraneous consideration. 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 consideration or has been exercised ignoring the relevant materials. Absence of any mode or guidelines 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 the relevant materials and/or has taken into consideration the matters which are extraneous and not germane to the object, the Writ Court, in exercise of the power under Article 226 of the Constitution of India, can interfere with such decision. Same is the view of this Court in the case of *Harihar Swain and Others Vs. State of Orissa and Others*, . It is specifically held in that case that, fixation of the Headquarter of a Gram Panchayat in any particular village is essentially an administrative matter and, so long as relevant considerations have weighed with the Government in fixing the Headquarters in a particular village, the High Court cannot interfere with the decision of the Government like an appellate authority and quash the decision of the Government. While exercising powers under judicial review, the High Court under Article 226 of the Constitution has only to see whether administrative power has been exercised within the limits of law after taking into account the relevant considerations, and so long as the High Court is satisfied that the power has been exercised within the limits of law after taking into account the relevant considerations, the High Court will not interfere with the same on the ground that it should have been located at a different place. It has further been held that, power has been vested in the State Government to decide the location of the office and the Headquarters of the Grama Sasan and such power can be exercised by the State Government from time to time depending upon the requirements of the public interest and there is no statutory bar for the Government to re-consider and take a fresh decision in the public interest. Same is the view of this Court in the case of *Smt. Babita Negi and Others Vs. State of Orissa and Others*, .

8. In the aforesaid background of law, the contentions raised by learned counsels for the parties are to be weighed. This Court, vide order dated 13.03.2013

passed in W.P. (C) No. 13794 of 2008, directed the Collector-cum-District Magistrate, Rayagada to convene a general meeting of both the villagers, i.e. Saradhapur and Laxmipur and discuss regarding the proposal of shifting of the Headquarters of the Gram Panchayat in the interest of the local people, and Resolution to be passed in the said meeting was directed to be communicated to the Secretary, Panchayat Raj Department, Govt. of Odisha, Bhubaneswar, who was authorized to take a final decision in shifting of the Headquarter of the Gram Panchayat keeping in view the provisions contained in Section 4(3) of the Orissa Gram Panchayat Act, 1964.

9. The Collector, however, got a meeting convened under the Chairmanship of the Sub-Collector, Gunupur. The resolution of the meeting has been filed as Annexure-4 to the writ petition. The meeting was held on 22.05.2013 at 9.00 A.M. under the Chairmanship of the Sub-Collector, Gunupur. The deliberations of the meeting have been recorded in detail. The number of people attended and participated in the voting from both the villages has been recorded. It is found from Annexure-4 that the direction of this Court in W.P. (C) No. 13794 of 2008 has been complied in letter and spirit. Though the Collector has not convened the meeting, it has been convened at the behest of the Collector under the Chairmanship of the Sub-Collector, Gunupur. I do not find any infirmity in the Sub-Collector presiding over the meeting though direction was issued to the Collector-cum-District Magistrate, Rayagada to convene the general meeting of both the villages. The Resolution of the meeting has been sent to the Government in Panchayat Raj Department, Bhubaneswar vide Letter No. 475, dated 10.06.2013 (Annexure-C to the Counter Affidavit filed by Opposite Party Nos. 2 and 3). While issuing the impugned Notification vide Annexure-5, the Commissioner-cum-Secretary, Panchayat Raj Department has taken into consideration the aforesaid Resolution dated 22.05.2013, as asserted in the Counter Affidavit filed by opposite party Nos. 2 and 3. In view of such facts and situation, it cannot be held that the direction of this Court in W.P. (C) No. 13794 of 2008 has been observed in breach so far as the meeting dated 22.05.2013 is concerned.

10. Next, it is contended that, so far as shifting of the Gram Panchayat Headquarter from village Saradhapur to Laxmipur is concerned, 214 villagers of village Saradhapur voted against the shifting and 62 villagers of village Laxmipur voted in favour of the shifting. The Panchayat Raj Department, Bhubaneswar, while issuing the impugned Notification vide Annexure-5, is alleged to have not taken into consideration the majority view expressed in the Resolution dated 22.05.2013 passed in the meeting held under the Chairmanship of the Sub-Collector, Gunupur. Saradhapur is one of the villages of the concerned Gram Panchayat. Laxmipur is another village of the selfsame Gram Panchayat. Admittedly, in the meeting dated 22.05.2013 pursuant to the direction of this Court the villagers of village Saradhapur and village Laxmipur were present. No villagers of other villages constituting the Gram Panchayat were present in the said meeting. The aforesaid meeting cannot be said to be a referendum for

location of the Gram Panchayat Headquarter. It cannot be also said to be reflection of the majority view and majority wish of the entire Grama Sasan. It cannot also be held that the popular will of the entire Grama Sasan in favour of existence of the Gram Panchayat Headquarter at village Saradhapur is reflected in the voting of 214 villagers of village Saradhapur, who voted against the shifting.

11. The Government, while issuing the impugned notification, have taken into consideration the view of the Collector, Sub-Collector, topographical advantage of both the villages, central location of village Laxmipur in relation to the Grama Sasan, as found from the Sketch Map vide Annexure-D/2, natural barriers which isolate the village Saradhapur and topographical advantage of village Laxmipur, and so on, in deciding to shift the Headquarters of the Gram Panchayat from village Saradhapur to village Laxmipur. There is nothing on record to show that the appropriate Government was moved by any extraneous consideration in taking the impugned decision and in issuing the impugned Notification vide Annexure-5. All considerations germane to the decision have been taken into view before deciding the issue and the Notification impugned in this writ petition cannot be said to be arbitrary.

12. For the aforesaid reasons, the Writ Petition is dismissed being devoid of any merit.