

(2014) 03 OHC CK 0016
In the Orissa High Court
Case No : W.P. (C) No. 15325 of 2011

Krushna Chandra Swain

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 04-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 1 ILR 921 : (2014) 1 OLR 653 Suppl.

Hon'ble Judges : B.K. Nayak, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.K. Nayak, J.—The petitioners, who are all residents of village-Godipalli in the district of Nayagarh, have filed this writ petition for quashing the Government notification No. 10368 dated 09.05.2011 (Annexure-1) whereby the Government have changed the headquarters of Godipalli Grama Panchayat from village Godipalli to village Chadeyapalli. By Notification No. 19606 dated 30.10.2001 (Annexure-2) the Government in exercise of power conferred u/s 3 read with Section 149 of the Orissa Gram Panchayat Act, 1964 (in short "the Act") constituted the Godipalli Grama (Grama Panchayat) consisting of three villages, namely, Chadeyapalli, Godipalli and Kotaranga. Since the headquarters of the Grama Panchayat was not specifically fixed by the Government, in accordance with the provision of sub section (3) of Section 4 of the Act the headquarters of Godipalli Grama Panchayat was situated in village Godipalli.

2. The Government notification constituting the Grama Panchayat was challenged by Magi Sahu & others before this Court in OJC No. 15885 of 2001, which was disposed of directing the petitioners therein to make representation before the Secretary, Panchayatiraj Department. The petitioners therein submitted representation for fixing of headquarters of Godipalli Grama Panchayat at village-Chadeyapalli, but the representation was turned down whereupon the villagers of Chadeyapalli and Kotaranga filed another writ petition bearing OJC No. 4797 of

2002 before this Court. The said writ petition was disposed of by order dated 13.11.2007 with the following observations and direction:

3. After hearing learned counsel for the parties and after going through the decision of the Government vide Annexure-6 and perusing the map with regard to location of the villages, this Court feels that the matter has not been considered in proper perspective and all facts were not taken into consideration. Though the opposite party-intervenees entered appearance, no counsel for them is present at the time of hearing. Accordingly, this Court disposes of this writ petition giving liberty to the petitioners to file another representation before the State Government enclosing all the documents within a period of three weeks hence. If such a representation is filed the State Government shall consider the matter in the light of the ratio of the decisions of this Court. The petitioners shall enclose authenticated Xerox copies of the decisions of this Court to their representation.

In accordance with the direction in OJC No. 4797 of 2002, the petitioners therein submitted fresh representation before the Government for fixation of Grama Panchayat Headquarters at village Chadeyapalli. The Government on fresh consideration of the representation has now issued the notification under Annexure-1 shifting the headquarters of the Grama Panchayat from Godipalli to Chadeyapalli, which is under challenge.

3. Learned counsel appearing for the petitioners submits that the report of the Collector, Nayagarh dated 31.01.2002 was taken into consideration by the Government on the earlier occasion and, therefore, the earlier representation of petitioners in pursuance of order passed in OJC No. 15885 of 2001 was rejected and that there has been no change of circumstance thereafter so as to warrant a decision with regard to change of headquarters of the Grama Panchayat. It is also submitted that funds have been sanctioned for construction of Grama Panchayat Office building at Godipalli where the Government land is available and that part construction has already taken place and that there is no government land available in village Chadeyapalli for construction of Grama Panchayat office and in such view of the matter the notification under Annexure-1 is the outcome of arbitrary and colourable exercise of power which has been done at the intervention of some political person and therefore liable to be quashed.

4. The State Government has filed a counter affidavit refuting the contentions raised in the writ petition. It is specifically stated that on receipt representation of the petitioners of OJC No. 4797 of 2002 as per direction of this Court dated 13.11.2007, the same was forwarded to the Collector, Nayagarh to make an enquiry and furnish detailed report along with sketch map of the Grama Panchayat regarding facilities available in village Chadeyapalli as well as village Godipalli, public conveyance, fresh opinion of the Gram Panchayat in shape of Gram Panchayat resolution and that the Collector, Nayagarh furnished a detailed report vide Annexure-A/1 and taking into consideration the report of the

Collector to the effect that village Chadeyapalli is centrally located inside the Grama Panchayat with well road connectivity and better facilities and on consideration of the same along with resolution of Grama Panchayat itself, the Government in exercise of its statutory power passed the notification under Annexure-1 shifting the headquarters of the Grama Panchayat to village Chadeyapalli which cannot be said to be arbitrary.

5. The Sarpanch of Godipalli Grama Panchayat has intervened and the learned counsel appearing for the intervenor while supporting the stand of the Government further submitted that the petitioners have suppressed about the earlier OJC No. 4797 of 2002 and the order passed by this Court therein and that the present impugned notification was issued after considering all relevant aspects of the matter on the basis of the enquiry report submitted by the Collector, Nayagarh. Therefore, the discretionary power exercised by the Government cannot be said to be arbitrary or mala fide and hence warrants no interference. It is also submitted that the allegations in the writ petition that the decision to shift the Grama Panchayat headquarters to Chadeyapalli was the outcome of the intervention by some political persons is not correct inasmuch as the petitioners have not furnished the name of any politician(s), who could have influenced the government decision.

6. The power to change the headquarters of Grama Panchayat squarely vests on the Government and this discretion has to be exercised on relevant considerations germane to the issue and cannot be permitted to be exercised on extraneous consideration. On several occasions this Court has examined the manner in which the discretionary power of the Government has to be exercised. In the case of Harihar Swain and Others Vs. State of Orissa and Others, , this Court has held as follows:

5. ... On a reading of Sub-section(3) of Section 4 of the Act we find that power has been vested in the State Government to decide the location of the Office and the headquarters of a Grama Sasan and such power can be exercised by the State Government from time to time depending upon the requirements of public interest and there is no statutory bar for the Government to reconsider and take a fresh decision in the public interest. ...

6. Fixation of headquarters of a Grama 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 power under judicial review, the High Court under Article 226 of the Constitution has only to see whether the administrative power has been exercised within the limits of law and 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.

In the case of Bijay Kumar Behera and others Vs. State of Orissa and others, , this Court has held as follows:

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 and therefore, it is the discretion of the State Government to constitute a group of contiguous villages at a Grama and to assign such Grama a name which shall be one of the villages comprised within the Grama. Sec. 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 german 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.

The observations, as above, are endorsement of the views of this Court taken earlier in the case of Pramod Kumar Bohidar and Others Vs. State of Orissa and Others, .

7. The dispute has a checkered career inasmuch as since the date of the constitution of Godipalli Grama Panchayat, this is the 3rd writ petition filed before this Court with regard to Constitution of the Grama Panchayat and fixation of its headquarters. On perusal of the Government file dealing with the present dispute it is revealed that the constitution of Godipalli Grama Panchayat by way of bifurcation was challenged soon after issuance of Notification for Constitution of Godipalli Grama Panchayat dated 30.10.2001 under Annexure-2 in OJC No. 15885 of 2001 and ever since the dispute is continuing.

8. With regard to the impugned notification, the Government file reveals that the Collector, Nayagarh was asked to cause an enquiry and submit report with regard

to the suitability of the place where the headquarters of the Grama Panchayat is to situate and accordingly the Collector submitted two reports one dated 30.04.2008 and the other dated 17.12.2009. The reports reveal that factors like population of three villages constituting the Grama Panchayat, geographical location and availability of comparative facilities in village Godipalli and Chadeyapalli were taken into consideration, apart from the resolution passed by the present Grama Panchayat with regard to location of headquarters of the Grama Panchayat and all the factors weighed in favour of village Chadeyapalli. The report of the District Panchayat Officer, Nayagarh and subsequent report of the Collector also reveals that all the relevant factors weighed in favour of village-Chadeyapalli. The said report also reveals that at present the office of the Grama Panchayat was functioning in village Kothaghar of Godiapalli village. The Kothaghar is a godown and that though there was sanction of money for construction of the office of the Grama Panchayat, one Salu Rout has started construction on the 1st floor of the Kothaghar, which has been done only up to lintel level at a cost of Rs. 1,40,000/- only.

There is also a report of the Block Development Officer, Odagaon which shows that the BDO personally visited the locality and found availability of 40 decimals of land in village-Chadeyapalli in Plot No. 2 of Khata No. 772 which can be used for construction of Grama Panchayat office.

It is thus evident that the Government has taken into consideration all relevant factors and being satisfied about the justifiability of shifting the headquarters of the Gram Panchayat issued the impugned notification (Annexure-1).

9. The earlier documents which the learned counsel for the petitioners relies upon are prior to disposal of OJC No. 4797 of 2002. The contention that no land is available in village Chadeyapalli for construction of Grama Panchayat Office building is not correct in view of the report of the BDO, Odagaon addressed to the Government. The contention that the impugned notification has been issued due to intervention of political person is misconceived, inasmuch as the Government Order does not indicate any such thing. All this goes to show that the Government before issuing the impugned notification has taken into consideration all relevant factors in the greater public interest and its decision does not suffer from any arbitrariness or malafides. In the aforesaid view of the matter, there is no scope for interference with the impugned notification.

The writ petition is devoid of merit and therefore dismissed. No Costs.