

**(2001) 04 OHC CK 0018**

**In the Orissa High Court**

**Case No :** Original Jurisdiction Case No. 10712 of 2000

Kusha Charan Parida and Others

APPELLANT

Vs

Collector and Others

RESPONDENT

**Date of Decision :** 20-04-2001

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation :** (2001) 2 OLR 66

**Hon'ble Judges :** P.K. Misra, J

**Bench :** Single Bench

**Advocate :** J.R. Dash and K.L. Dash, for the Appellant; A.G.A., for the Respondent

## Judgement

P.K. Misra, J.—Though the matter was listed for orders, on the contest of learned counsel for parties, the matter is taken up for disposal.

2. Heard the counsel for parties. On 27.3.2001 it was directed that the matter shall be listed on 6.4.2001 to enable the learned Addl. Government Advocate to obtain instruction and to file counter in the main writ application. On 6.4.2001, further time was allowed and it was clear that no further time will be allowed. On 13.4.2001, the matter was again adjourned to 20.4.2001. However, counter affidavit has not been filed, but the learned Addl. Government Advocate has submitted that the assertions made in the show-cause reply on behalf of opposite parties in the matter relating to initiation of Contempt proceeding may be considered for the purpose of deciding the writ application.

3. The petitioner had prayed for a direction to the opposite parties to undertake the work relating to construction of Brahmanbad Primary School building out of the assistance provided by the Madhya Pradesh Government, as had been decided in the D.R.D.A. Meeting and communicated as per Annexure-1. It is alleged by the petitioners that the aforesaid fund which was ear-marked for the purpose of construction of Brahmanbad Primary School building is being diverted on the basis of political pressure for the purpose of construction of Charchika

M.E. School. In the show-cause reply to the matter relating to initiation of Contempt proceeding, it has been indicated that the roof of the Brahmanbad Primary School has been repaired by spending Rs. 65,000/- from out of Employment Assurance Scheme fund. It has been further submitted that the District Magistrate and Collector visited the school as well as other school, namely, Charchika M.E. School, which has not been reconstructed after cyclone and as such, the Collector decided to take up the matter relating to construction of Charchika M.E.School. Even though such intention may appear to be noble, since it had been decided that Rs. 2,50,000/- should be spent for the purpose of construction of Brahmanbad Primary School, there was neither any justification, nor any authority for the Collector to change the same and divert the fund for construction of Charchika M.E. School. Of course, it has been indicated that the fund has not been diverted and is available. In such view of the matter, the opposite parties are directed to undertake the work relating to construction of Brahmanbad Primary School and complete the same as expeditiously as possible. This order will not stand in the way of the opposite parties for constructing or repairing the Charchika M. E. School by utilising any other fund, but the fund which has been ear-marked for the construction of Brahmanbad Primary School and should not be diverted.

The writ application is accordingly disposed of.

There will be no order as to costs.