

(1986) 10 OHC CK 0009

In the Orissa High Court

Case No : Original Jurisdiction Case No. 109 of 1986

Ladukishore Sethi

APPELLANT

Vs

D.P.I. Elementary and Adult Education and Others

RESPONDENT

Date of Decision : 27-10-1986

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1986) 62 CLT 653 : (1986) 2 OLR 676

Hon'ble Judges : K.P. Mohapatra, J;B.K. Behera, J

Bench : Division Bench

Advocate : C.R. Nanda and S.K. Ghose, for the Appellant; S.K. Das, A.S.C., for the Respondent

Final Decision : Allowed

Judgement

B.K. Behera, J.—While serving as the Headmaster of the Upper Primary School at Badaputi, the petitioner made a representation in June, 1985, for his transfer to any school within the area of Chatrapur Panchayat Samiti. He was transferred as per Annexure-1 to the Upper Primary School, Agraharam. This order of transfer was received by him on August 17th, 1985. The order of transfer of the petitioner as per Annexure-1 was immediately modified and he was re-transferred and posted at the Upper Primary School at Jorada. He assails the order of transfer as per Annexure-2 as illegal and as having actuated by mala fides at the behest of the local Member of the Legislative Assembly. In the counter affidavit, the District Inspector of Schools, Chatrapur (opposite party No. 2) has denied the allegations.

2. Mr. Nanda has contended for the petitioner that the impugned order of transfer is mala fides, illegal and unjustified. Reliance has been placed by him on a decision of this Court reported in o Achyutananda Behera Vs. State of Orissa and Others, the learned Additional Standing Counsel has submitted that as averred in the counter affidavit, the re-transfer of the petitioner has been ordered not only at the instance of the Member of the Legislative Assembly, but

also for administrative reasons. He has, however, submitted that in the order of transfer, a statement has been made that it has been done at the instance of the Member of the Legislative Assembly and this was not proper.

3. It is important to keep in mind that the order of transfer as per Annexure-1 had been made in the interest of public service, as stated therein. Five transfers have been made as per Annexure-2 and it has been mentioned at the top that the transfers have been ordered as desired by "the Hon'ble M. L. A., Chatrapur" , It has not been stated in Annexure-2 that the re-transfer of the petitioner has been made for administrative reasons or for other consideration, such as, interest of public service.

4. In *Achyutananda Behera Vs. State of Orissa and Others*, , this Court has observed :

" Any citizen can plead before an administrator for redress of his personal grievances or the grievances of the public at large, for pushing through the various schemes and projects, for social welfare programmes Who can better serve as a spokesman than a legislator, an elected representative of the people ? He is not only a law maker but a spokesman of the people inside the legislature and outside it. He can plead, canvass and claim for the people and in the public interest. But it should not be lost sight of that there exists clear distinction between pleading, canvassing and claiming on the one hand and interference on the other. .-----"

An order of transfer, unless infected by mala fides or oblique motives, is not assailable, The administrator is the best Judge of the exigencies of public service and the interest of administration. But where the exercise is for collateral purpose or with an oblique motive, it is a colourable exercise of power and is mala fide. Circumstances may Irresistibly lead to an inference of mala fides. Where the administrator acts solely at the behest of another person without being alive to his own duties and responsibilities, the order of transfer would be open to challenge as colourable exercise of powers and would be vulnerable if it is made solely on extraneous considerations, but not on administrative grounds or exigency of public service. The respective jurisdictions of the legislator and the administrator are well-defined and it is not permissible for the one to cross the boundary and trespass into the jurisdiction of the other, as observed and held in the aforesaid reported case.

5. As in that case, in the instant case too, as the impugned order would show, the petitioner has been re-transferred as per Annexure-2 as desired by the Member of the Legislative Assembly. There is no material to show that the re-transfer of the petitioner has been made in the public interest, in that exigency of service or on administrative bounds. It would be just and reasonable, in our view, to accept the contention raised on behalf of the petitioner in the light of the principles laid down in *Achyutananda Behera Vs. State of Orissa and Others*, and quash Annexure-2 so far as it relates to the re-transfer of the petitioner.

6. We would accordingly allow the application and quash Annexure-2 so far as it relates to the petitioner. In the circumstances of the case, we make no order as to costs.