

(1964) 02 OHC CK 0004
In the Orissa High Court
Case No : O.J.C. No. 46 of 1963

Mahadeb Panda and Another

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 26-02-1964

Acts Referred:

Constitution of India, 1950 — Article 16(2), 31(2)
Orissa Hereditary Village Offices (Abolition) Act, 1962 — Section 2, 5, 5(2)

Citation : AIR 1964 Ori 235 : (1964) 30 CLT 359

Hon'ble Judges : R.L. Narasimham, C.J;G.K. Misra, J

Bench : Division Bench

Advocate : H.G. Panda and M.M. Sahu, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—This is a writ petition by three former ex-village officers of Ganjam district, challenging the constitutional validity of the Orissa Hereditary Village Offices (Abolition) Act (Orissa Act 12 of 1962), by which the Madras Hereditary Village Offices Act 1895 (Madras Act 3 of 1895) was repealed. While repealing the Madras Act, the Orissa Legislature, in Section 6 of the Orissa Act 12 of 1962, provided for some relief to those village officers whose services were dispensed with in consequence of the abolition of their offices Clause (1) of Section 5 of the Orissa Act says that on the abolition of these hereditary village offices the holders for the time being may be appointed to suitable posts under the State Government. Clause (2) of the section says that a solatium, of a certain amount may be given to those village officers who are not absorbed in suitable posts under the Government. Though Mr. Panda urged that the compensation thus granted to the hereditary village officers (who lost their posts in consequence of the coming into force of the impugned Act) was not a just or equivalent compensation nevertheless we find that the adequacy of the compensation is not justiciable in view of the bar imposed by Clause (2) of Article 31 of the Constitution. Hence the validity of Section 5 of the Orissa Act is

beyond dispute. (2) Mr. Panda however contended that the, abolition of the hereditary village offices in the Ex-Madras areas of Ganjam and Koraput districts were not done for a "public purpose" and that this was a justiciable issue. There is no doubt about the correctness of the proposition that where a property is compulsorily acquired for a public purpose, the question whether such acquisition was really for a public purpose is, to a limited extent, justiciable in the law courts. We find, however, in a statement of objects and reasons attached to f the Bill (when the aforesaid Orissa Act was before the Orissa Legislature) that the reasons for passing the Act were given as follows:

"With the primary object of economy in expenditure and uniformity in revenue administration the present Bill is proposed to be enacted to abolish the village officers system now prevalent in Ganjam district in order to facilitate the introduction of the Naib Tahasildar system of revenue administration which is prevalent in other parts of the State. The Bill seeks to achieve the above objective."

Mr. Panda could not give us any material to show that the aforesaid objective was only a colourable pretence, nor could he seriously contend that a piece of legislation which aims at effecting economy in expenditure and seeks to bring about uniformity in revenue administration, is not for a public purpose. We must therefore reject this contention of Mr. Panda.

3. Mr. Panda then contended that there was unfair discrimination between one class of village officers and another class. Clause (a) of Section 2 of the impugned Act defines "holder of a hereditary village office as a person who holds the office either permanently or while officiating in a permanent vacancy." Section 5 as already stated, provides for compensation to such holders of hereditary village offices, by either giving them suitable posts under the Government, or by giving them some solatium. Mr. Fanda urged that under the provisions of the Madras Act 3 of 1895 minors whose names were entered as holders of hereditary village offices by virtue of Section 10(5) of that Act were not declared to be "holders of village offices" for the purpose of the impugned Orissa Act and no compensation was provided for such persons. According to Mr. Panda therefore there was unfair discrimination against minors entered as holders of village office under the Madras Act. The obvious answer to this contention is furnished by the judgment of the Supreme Court, reported in *Gazula Dasaratha Rama Rao Vs. The State of Andhra Pradesh and Others*, , where their Lordships held that Section 6(1) of the Madras Act in so far as it makes a discrimination on the ground of descent only, is void being violative of Article 16(2) of the Constitution. The right of a minor to be entered as the holder of a hereditary village office flows from his right of descent as provided in the last sentence of Section 6(1) of the Madras Act and it was in consequence of this right that Section 10(3) of that Act provided for the registration of the minor as the heir of the last holder of the office, and directed the appointment of some other person to discharge the duties until the minor attained majority. Once the

Supreme Court has held that there can be no right of descent to a public office of this type it must necessarily follow that the entry of the minor's name as the holder of the office is itself invalid. Consequently the absence of any provision in the impugned Orissa Act, providing for compensation for the abolition of village offices held by minors cannot be held to be unconstitutional, because, such minors had no right to property at all.

4. Finally Mr. Panda contended that the rules made by the Government of Orissa u/s 9 of the impugned Act were capable of being abused, Rule 6 says that applications from ex-village officers for suitable posts under Government should be made within one month from the appointed date (the appointed date being 1-2-1963). The petitioners alleged in ground No. 7 of their petition that applications were accepted even before the appointed date and that all the vacancies were filled up by 20-2-63 in consequence of which one Upendranath Das Karnam of Ghumsur who submitted an application on 26-2-63 (within the statutory period) was denied a job on the ground that there was no vacancy. In my opinion this contention cannot be taken up in this writ application. Upendranath Das is not party in this application. The petitioners cannot possibly feel aggrieved if Upendranath Das was not given a suitable post on his application. Moreover we find that in ground No. 7 of the writ petition it is further stated that the said Upendranath Das was directed to appear before the Settlement Officer for a job. There was thus no final refusal to give him a suitable job. Even if a provision of the rules is abused by the authorities concerned, that can be no ground for challenging the validity of the Act.

5. For these reasons the application is dismissed with costs. Hearing fee Rs. 50/- (Fifty).

Misra, J.

6. I agree.