
(1991) 11 OHC CK 0017

In the Orissa High Court

Case No : Original Jurisdiction Case No. 901 of 1991

Maheswar Das

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 11-11-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 1 OLR 443

Hon'ble Judges : B.L. Hansaria, C.J.;K.C. Jagadeb Roy, J

Bench : Division Bench

Advocate : J.K. Rath and M.M. Senapati, for the Appellant; A.C. Pradhan, for O.P. No. 7 - Intervenor, for the Respondent

Judgement

B.L. Hansaria, C.J.—This petition assails the change of the Government decision in establishing a Primary Health Centre by stating that the same shall be located at Barapur under Basudevpur Block instead of Kharasahapur under Bahanaga Block. The decision to establish the Primary Health Centre at Kharasahapur during the financial year 1990-91 was taken on 5-1-1991. That decision required fulfilment of the following conditions ;

(1) The local people should provide minimum one acre of land duly pledged in favour of the Panchayat Samiti for the medical institution within a period of one month from the date of issue of the order.

(2) The local people should provide temporary accommodation for the medical institution as well as for the staff by 20-1-1991 for operationalisation of the institution.

(3) The local people should provide permanent buildings for the medical institution as well as for the staff within six months from the date of issue of the order.

The order further stated that if the aforesaid conditions would not be fulfilled by the local people within the stipulated period, Government allocation of the

proposed medical institution will be cancelled and such institution will be allotted to another place in the same Block.

2. The Government received a report of the Chief District Medical Officer, Balasore, dated 28-1-1991 on 30-1-1991 to the following effect;

(a) Deed of Ac. 1.00 has already been registered and submitted to his office.

(b) The Secretary has given undertaking as follows :

(i) Two pucca buildings shall be provided for running the institution early.

(ii) Provide free accommodation to the staff,

(iii) Complete the building as well as the staff quarters within six months.

On receipt of this report which indicated that the local people had furnished only an undertaking to provide accommodation instead of actually providing accommodation as per the sanction order, the Government reviewed its earlier decision dated 5-1-1991 on 7-2-1991 and decided to establish the Primary Health Centre at Barapur under Basudevapur Block in place of Kharasahapur under Bahanaga Block.

3. Before examining the contentions advanced by Shri Rath for the petitioner, it would be apposite to bear in mind the limited scope of judicial review of such administrative decisions. This Court had occasion to deal with a similar matter in *Mohinuddin v. State of Orissa* in OJC No. 1864 of 1991 disposed of on 28-8-1991 in which a challenge was made to the decision of the Government to locate the headquarters of the North Zonal Office of the Higher Secondary Education Council at Baripada, wherein reference was made to the decision of the Apex Court in *J.R. Raghupathy and Others Vs. State of A.P. and Others*, , and it was ultimately pointed out that such matters can be subject to control by judicial review on three grounds ; (i) illegality ; (ii) irrationality ; and (iii) procedural impropriety".

4. In the case at hand, we do not find any illegality as such inasmuch as the question as to where a Primary Health Centre should be located is not governed by any statute. Of course, there has been procedural impropriety inasmuch as such decisions are required to be taken on the recommendation of the District Development Advisory Board in view of what has been stated in Annexure-1 dated 10-8-1990 dealing with the revised procedure for location of medical institutions. As, however, the District Development Advisory Board is a recommending authority and the ultimate decision rests with the Government, we do not think if we would be justified in setting aside the impugned decision because of lack of any recommendation of the aforesaid Board in favour of Barapur, if the decision can otherwise be regarded as rational. Let it, therefore, be seen as to whether the decision to change the location of the Primary Health Centre can be said to be irrational.

5. Shri Rath appearing for the petitioner has strenuously contended that as the

people of Kharasahapur had by and large complied with the three conditions which were mentioned in the Government decision dated 5-1-1991, the change of location was uncalled for. It is submitted that condition No. (1) relating to providing one acre of land had been duly fulfilled and the people of the locality had collected a sum of Rs. 40,000/- at the first spell for construction of a permanent building for the institution. The construction work could not however be undertaken due to non-receipt of the model plan, but then, the Chief District Medical Officer had been informed about temporary accommodation for the medical institution as well as for the staff vide letter dated 19-1-1991 as at Annexure 5. It thus seems that the villagers of Kharasahapur had by and large complied with the conditions noted above.

6. But then, the State Government was not in know of these activities of the residents of Kharasahapur inasmuch as the Chief District Medical Officer in her report dated 28-1-1991, whose contents have been noted above, did not inform the Government about the same. A need for review was, therefore, felt by the Government and having noted that four Primary Health Centres were required to be established under Bahanaga Block as against which three were already functioning whereas for Basudevpur Block, which demanded establishment of five Primary Health Centres, two were functioning it was found that while Bahanaga Block required one more Primary Health Centre, Basudevpur Block required three. Besides this, it was noted that Barapur under Basudevpur Block is geographically isolated place on account of two torrential rivers and prone to epidemic every year. Under these circumstances, the decision to change the location was made. We do not think if irrelevant considerations were borne in mind by the Government in reviewing its earlier decision,

7. From the application filed on behalf of the intervenor, who is a resident of Barapur and has supported the changed decision of the Government, we find that in Basudevpur Block there are 25 Grama Panchayats with four Primary Health Centres whereas in Bahanaga Block, there are 10 Grama Panchayats having five Primary Health Centres. Barapur takes care of the needs of the residents of five Grama Panchayats which in the rainy season becomes isolated. The population of these five Grama Panchayats is said to be 60,000 as per the 1981 census of which 40% belongs to the Scheduled Caste community. This apart, it is stated in the petition that there is a Primary Health Centre at Bishnupur which is about three kms. from Kharasahapur. There is also another Primary Health Centre at Gopalpur which is at a distance at about eight kms. from Kharasahapur and still another Primary Health Centre at Anantapur at a distance of about four kms. All these places are said to be connected with all-weather pucca road.

8. If attention is paid to all the aforesaid facts, we would not be justified in regarding the changed decision of the Government as irrational. Of course, it had been stated in the Government decision dated 5-1-1991 that if the local people would not fulfil the conditions mentioned therein within the stipulated period, the

institution will be allotted to another place in the same Block. Shri Rath contends that by the decision of the Government taken on 7-2-1991, a village in a Block than Bahanaga was selected which is in violation of the aforesaid condition. This submission is undoubtedly tenable. But then, we do not think if at the instance of the Secretary of the proposed Kharasahapur Primary Health Centre Committee who is the petitioner before us, we would be justified in setting aside the modified decision of the Government by selecting a place for establishment of the Primary Health Centre in altogether a different Block. The residents of Kharasahapur would have made the present grievance even if another place in Bahanaga would have been selected for the purpose. This technical violation of condition has, therefore, not been deemed sufficient by us to set aside the modified decision at the behest of the residents of Kharasahapur.

9. The limited power of judicial review, therefore, does not permit us to interfere with the impugned order. However, keeping in view the fact that the case of Kharasahapur was duly recommended by the District Development Advisory Board after taking note of all the required factors and that recommendation had been once accepted by the Government, and the residents of Kharasahapur have satisfied the conditions mentioned in this regard in Annexure-3 as observed in paragraph 6; about which, however, the Government was not communicated by the then Chief District Medical Officer, we are of the opinion that the Government has to establish a Primary Health Centre in that village and we, therefore, direct it to do so in the financial year 1991-92.

10. The petition is disposed of accordingly.

11. The delay in delivery of the judgment has occulted because after the hearing of the case was over on 3-10-1991, one of us Hon"ble Jagadeb Roy, J. had to remain absent from the Court from 8th October. In the meantime, the Puja holidays intervened and Hon"ble Jagadeb Roy, J. joined the Court on 6th November.

K.C. Jagadeb Roy, J.

I agree.