
(2008) 10 OHC CK 0025
In the Orissa High Court

Nibarana Sendha and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 27-10-2008

Acts Referred:

Orissa Grama Panchayat Act, 1964 — Section 4(3)

Citation : (2009) 1 OLR 543

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.M. Das, J.—Heard learned Counsel for the petitioners and the learned Counsel for the State.

2. The petitioners in this writ petition have prayed for quashing the notification under Annexure-4-fey which the Government in its Panchayati Raj Department ordered that the office of the headquarters of the Grama Sasan of Grama Sogarposi in Dhenkanal Sadar Block in the district of Dhenkanal shall be situated in the village Dudhukateni. The case of the petitioners is that by notification No.19170/GP dated 20.10.2001 under Annexure-1, the Government upon reconstitution of the Grama Panchayats constituted Sogarposi Grama Panchayat having the villages Sogarposi, Arada, Parikheda, Dudhukateni and Nathua within its local area. The petitioners claim that in the said notification, the village Sogarposi was declared as the headquarters of the Grama Panchayat and rightly so, as the Grama Panchayat was named in the name of the said village. On extraneous considerations, the Government issued the notification dated 7.11.2001 under Annexure-4 shifting the headquarters of the Grama Panchayat to village Dudhukateni without any plausible reason. The petitioners have, therefore, prayed to quash the subsequent notification alleging that there was no reason for changing the headquarters from the village Sogarposi to village Dudhukateri.

3. Two counter affidavits have been filed, one by the opp.party No.1 and other by the opp.parties 2 to 4, who are the Collector, Sub-Collector and Block Development Officer respectively and the said opp.parties 2 to 4 have stated in the counter affidavit that in the initial notification, by which, on bifurcation, Sogarposi Grama Panchayat was constituted, no headquarter of the said Grama Panchayat was fixed. Subsequently, the Government, by the impugned notification, fixed the headquarter of Sogarposi Grama Panchayat at Dudhukateni on the ground that the village Dudhukateni is well communicated and more convenient than the other villages under the Grama Panchayat and it has the highest population amongst all the villages under the said Grama Panchayat. On the above ground, it has been pleaded that there is no illegality or infirmity in the impugned notification calling for interference of this Court.

4. Counter affidavit on behalf of the opp.party No.1 has been filed by the Deputy Secretary in the Panchayati Raj Department of the Government, inter alia, stating that the Government, exercising jurisdiction u/s 4(3) of the Orissa Grama Panchayat Act, selected Dudhukateni to be the most convenient village for situation of the headquarters of the Grama Panchayat of Sogarposi. Similar grounds for choosing Dudhukateni as the headquarters have been taken as in the counter affidavit filed by the opp.parties 2 to 4.

5. During the course of hearing of the writ petition, the connected record was called for from the Government. On perusal of the same, it appears that considering the recommendation of the reorganization committee, the Government decided to split up 33 Grama Panchayat by creating 25 new Grama Panchayats and reorganizing 7 other Grama Panchayats, totalling 65 Grama Panchayats. Out of the same, bifurcation of one Grama Panchayat, namely, Binasa was not accepted, but the same was subsequently accepted by the notification dated 29.10.2001. Such reorganization and creation of new Grama Panchayats were notified and published in the gazette. From the said notification, it appears that Sogarposi Grama Panchayat was newly formed containing the five villages as already stated above.

6. An application for intervention has been filed by some of the villagers of Dudhukateni countering the claim of the petitioners.

7. Learned Counsel for the petitioners relying upon the decision in the case of Pramod Kumar Bohidar and Others Vs. State of Orissa and Others, ; Bijay Kumar Behera and others Vs. State of Orissa and others, and Smt. Babita Negi and Others Vs. State of Orissa and Others, submits that it would be clearly evident from the record that the Government without assigning any reason and without taking the facts existing into the consideration, issued the notification directing that the headquarters of Sogarposi Grama Panchayat will be situated at village Dudhukateni. He, therefore, submits that applying the ratio of the aforesaid decision, the impugned notification should be struck down.

8. Learned Counsel for the State, on the contrary, relying upon the decision in

the case of Harihar 2003 (Supp.) OLR 987 I Swain and Ors. v. State of Orissa and Ors. (2003) 96 CLT 454 submits that fixation of headquarters of the Grama Panchayat being an administrative action and within the discretion of the Government, the same should not be interfered with by exercising jurisdiction under Article 226 of the Constitution.

9. As already stated above, on perusal of the connected records produced by the learned Counsel for the State, it is seen that nothing was considered by the Government before taking a decision that the headquarters of the Sogarposi Grama Panchayat should be situated at Dudhukateni.

10. This Court, in the cases of Pramod Kumar Bohidar and Ors. {supra}, Bijay Kumar Behera and Ors. (supra) and Smt. Babita Negi and Ors. (supra), while considering the different sets of facts, has laid down that this Court should not interfere with the decision of the Government in an administrative matter like an appellate authority, but while exercising power of judicial review under Article 226 of the Constitution, such decision if found to be made on irrelevant consideration or is an out-come of non-application of mind, this Court can, while exercising its plenary jurisdiction under Article 226 of the Constitution, interfere with the said order by judicially reviewing the same. It is trite to state that such discretionary power, while being exercised by the State, can only be done on relevant considerations and devoid of any extraneous consideration. If the same is done ignoring the relevant materials or the power has been colourably exercised, such decision has to be set aside.

11. The decision of the Government has been attempted to be supported by assigning reasons only in the counter affidavit which does not appear from the connected record.

12. In the facts and circumstances of this case, therefore, it would be Just and proper to set aside the impugned notification under Annexure-4 and remit the matter back to the Government to reconsider the question of fixing the headquarter of the Sogarposi Grama Panchayat. While doing so, the Government should take into consideration all relevant facts as existing. Till such a decision is taken, the constitution of the Grama Panchayat headquarter building at Dudhukateni shall not be proceeded with. It is, therefore, ordered accordingly.

The writ petition is accordingly allowed.