

(2007) 01 OHC CK 0018
In the Orissa High Court

Open Learning Systems and Gourimani Sahoo and Others	APPELLANT
Vs	
State of Orissa and Others	RESPONDENT

Date of Decision : 18-01-2007

Acts Referred:

Constitution of India, 1950 — Article 45, 47
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 2

Citation : (2007) 104 CLT 81 : (2007) 1 OLR 663 Supp

Hon'ble Judges : S.B. Roy, C.J; M.M. Das, J

Bench : Division Bench

Judgement

M.M. Das, J.—As both the above Writ Petitions arise out of common facts and were heard together, they are disposed of by this common Judgment.

2. W.P(C) No. 6118 of 2006 has been filed by the Open Learning Systems which is a Non-Government Voluntary is Organization and registered as a Society under the Societies Registration Act, 1860. The said organization has sought for quashing the Order dated 17.4.2006 of the Government rejecting the application of the Petitioner dated 12.9.2005 for allotment of plot no G-3-A/2 in Revenue Plot No. 4704 (part) under khata No. 1074 in mouza-Gadakana. The Petitioner has further prayed for a direction to the Opp. Parties to allot the above land in favour of the Petitioner.

3. W.P.(C) No. 6655 of 2006 has been filed by the number of Petitioners claiming themselves to be the parents of the mentally, physically and emotionally handicapped children who have been provided with education, treatment and rehabilitation by the organization i.e., Open Learning Systems which is the Petitioner in the other Writ Petition, i.e., W.P.(C) No. 6118 of 2006. The Petitioners in this Writ Petition (W.P.(C) No. 6655 of 2006) have also prayed for quashing the Order dated 17.4.2006 of the Government by which the request of the Open Learning System for allotment of the land in question was refused.

4. As claimed by the Petitioners in both the Writ Petitions, the Open Learning Systems is a registered Society under Societies Registration Act, 1860 and in a

voluntary organization established to achieve the objectives of fostering all-round development of children. It is claimed by the Petitioners that the said organization has introduced its Multi Dimensional Services in Orissa from the year, 1987. The purpose of establishment of the organization is stated to be:- "for ensuring that in all spheres of life physical, social, emotional and intellectual rights of a child where normal or identified as exceptional, unprotected, disadvantaged, underprivileged or exploited, is protected and the support facility given by the Government actually reaches the people". Various documents have been annexed to the Writ Petition disclosing as to how the said organization is attempting to protect Juveniles/children who are differently able and challenged either physically or mentally, and how it is working for the development of such children.

5. However, the dispute raised before this Court is with regard to the claim of the said Open Learning Systems over a piece of land adjacent to the plot where the said organization has established the institution.

6. In order to appreciate the cases of the respective parties, we called for the relevant files dealing with the allotment of lands to the Open Learning System and Hotel Rashmi Plaza represented by the Opp. Party No. 4 in W.P.(C) No. 6118 of 2006.

7. We have carefully perused the said files produced by the Learned Government Advocate, before us. From the various orders passed by different authorities, in the said files, it appears that, on the application made by the Open Learning System for allotment of 12 acres of land in its favour, the matter was considered by the concerned authorities and the Site Selection Committee in its meeting held on 13.5.2002 recommended for allotment of Ac.2.00 land in mouza-Gadakana in its favour. Accordingly, on direction being issued, the Bhubaneswar Development Authority prepared a drawing carving out Ac. 1.929 of land. A memorandum dated 17.2.1994 was prepared by the Special Secretary to the Government, available at page-88 of the Government file bearing No. AL (BCS) 2/95 in which the application of the Open Learning Systems was considered. For better appreciation, the said memorandum is quoted hereunder:

Government of Orissa, General Administration Department. MEMORANDUM

Bhubaneswar, dated the 17.2.1994

Sub:- Allotment of land for establishment of Open Learning System at Bhubaneswar.

The Director of Open Learning System applied for allotment of 12 acres of land for the organization. This is a Voluntary Organization dealing with Spastics, Mentally retarded children and the children with multiple handicaps.

This proposal was discussed in the Site Selection Committee meeting held on 13.5.1992 and the Committee recommended for allotment of Ac. 2.00 of land in Mouza-Gadkan. Accordingly, the drawing has been prepared by B.D.A. indicating

the above area for the said Institutional purpose. Government have been pleased to agree to allot an area measuring Ac. 1.929 of land free of premium.

The Open Learning System is a registered voluntary organization and wants to set up an integrated institute for the welfare of cerebral palsy and other multi handicaps. It also intends to rehabilitate the children with mental retardation. The Panchayati Raj Department have recommended this proposal. The Organization is also affiliated to the Spastic Society of Eastern India. It aims at a complete educational system with provision for training of pre-school teachers and child development centre. In order to facilitate establishment of such voluntary organization offering education to other spastics and mentally retarded children, two acres of land (1. 929 acres) is proposed to be allotted free of premium at a revenue loss of Rs. 28,93,500.

Finance Department have concurred in the proposal in their U.O.R. No. 357/GS.II dated 7.5.93.

This proposal is placed before the Cabinet Sub-Committee on resources for kind consideration.

Pritiman Sarkar Special Secretary to Government

It further appears that subsequent to such action having been taken by the Government, the said memorandum in the nature of a proposal was submitted for approval of the Cabinet. However, there was a request by the Open Learning Systems for leasing out the above land free of premium. The Cabinet in its meeting held on 7.7.1994 took a decision as follows:

It was decided that one acre of land only may be given free of premium to the said institution.

8. Basing on the above, the drawing prepared by the Bhubaneswar Development Authority was revised and ultimately by execution of a lease deed on 6.4.1995, land measuring Ac. 0.965 in plot No. G 3 A/1 in Bhubaneswar Municipal area, as per drawing No. B 725, was leased out free of premium, to the Open Learning Systems. It is an admitted case that over the said land, the said organization has constructed its building where spastics and other differently abled children are provided with facilities for their development including education, games etc.

9. We have also seen from the above file of the Government that though initially the Government took a decision to provide two acres of land to the said organization, but considering the financial implication of granting the said land free of premium, the Cabinet took a decision to allot one acre of land free of premium. However, no further decision was taken with regard to the balance land which was initially decided to be allotted to the said organization. The Petitioner-organization claims that the adjacent land measuring Ac. 1.00 which was originally carved out to be allotted to it, is being used by the children as a playground and for other activities of the said organization/institution. The Petitioners claim that they were repeatedly requesting the Government for

allotment of the balance land and ultimately when a wall constructed by the institution was attempted to be demolished, on enquiry, they could come to know that the Government is going to allot the said land in favour of Hotel Rashmi Plaza.

10. From the counter affidavit filed, it appears that Hotel Rashmi Plaza has already deposited a premium of Rs. 33, 77,500/- and the land has been allotted in its favour and when advance possession was being handed over to it, the staff and management of the Petitioner-organization physically opposed the same for which a show cause notice was issued to the Petitioner-organization.

11. Mr. R.K. Mohanty, Learned Counsel appearing for Opp. Party No. 4, in both the Writ Petitions, who represents the subsequent allottee being Hotel Rashmi Plaza, vehemently argued that the Government after taking into consideration the application of the Petitioner decided to grant a piece of land to the extent of Ac.0.965 decimals and accordingly, lease for the above property has been granted in favour of the Petitioner-Open Learning Systems in the year, 1994. He further contended that as after grant of lease of the above land by the Government to the said organization, the application for allotment of land filed by it should be treated to have been disposed of and the said organization can not have any objection to the action of the Government in granting the adjacent land to Hotel Rashmi Plaza. It is further submitted by him that after allotment of the land, the Opp. Party No. 4 has incurred financial liabilities to raise construction over the same and the action of the Petitioner-organization in physically protesting to the delivery of possession of the allotted land to the Hotel Rashmi Plaza was absolutely illegal and in that view of the matter, the show cause notice was rightly issued, calling upon the said organization to show cause as to why the lease granted in its favour should not be resumed. With regard to the impugned letter by which the request of the Petitioner-organization for allotment of the adjacent land was rejected, Mr. Mohanty, contended that by the date when such request was made, the said adjacent land having already been allotted in favour of the Hotel Rashmi Plaza, no illegality has been committed in issuing the said letter to the Petitioner-organization, whereby the request has been refused.

12. Mr. Rath, Learned Senior Counsel appearing on behalf of the Open Learning Systems, on the contrary, submitted that the Petitioner-organization is a voluntary organization which is working hard for protection and care of children who are mentally, physically and emotionally handicapped by providing them proper education and rehabilitation. He submitted that sufficient materials have been produced before this Court in support of the benevolent, genuine and sincere effort as well as various projects which are being taken up by the Open Learning Systems with the above objectives. Mr. Rath, vehemently argued that as originally the Government decided to allot Ac.2.00 of land to the Petitioner organization and when the said organization requested to lease out the land, free of premium, the Cabinet decided to grant Ac. 1.00 out of the said land without

premium, it pre-supposes that the balance Ac 1.00 was to be allotted to the Petitioner-organization on payment of premium. He, therefore, submitted that the Government before allotting the land in favour of Hotel Rashmi Plaza should have made a genuine enquiry with regard to the requirement of the said land by the Petitioner-organization, in which event, it could have been found that the land allotted in favour of the said Hotel Rashmi Plaza is being occupied and used by the unfortunate children who are nurtured by the petitioner-organization. The State being a benevolent body and our country being a signatory to the United Nation Convention on the rights of the child which lays down a set of standard to be adhered to by all State parties in securing the best interest of the child and emphasizing the special care and protection of children, in view of the relentless efforts made by the Petitioner-organization to achieve such goals, in the facts of the case, the Government should have leased out the adjacent plot of land in favour of the Petitioner-organization instead of the Hotel Rashmi Plaza which is admittedly a commercial venture.

13. From the documents produced before us by the Petitioners as well as from the connected files produced by the Government Counsel, this Court finds that the Open Learning Systems is receiving aid from various sources to achieve its objectives and all out efforts are being made by it in that regard. It also transpires from the file produced by the State that at a point of time, the Government decided to lease out Ac. 2.00 of land to the Petitioner-organization.

14. It would not be out of context to mention that under Articles 45 and 47 which occur in Part-IV of the Constitution (Directive Principles of State Policy) mandates that the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years and the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. Basing on the above directive principles and on the United Nation Convention dated 20.11.1989 on the rights of the child, the Union Legislature has enacted the Juvenile Justice (Care and Protection of Children) Act, 2000. In the statement of objects and reasons of the said Act, it has been stated that in the context of Care and Protection of Children, proposals have been made including the proposal to spell out the role of the State as a facilitator, rather than doer by involving voluntary organizations and local bodies in the implementation of the proposed legislation. In the said Act under the definition Section, i.e., Section 2(d) "child in need of care and protection" has been defined. In sub Clause (iii) of the said definition, it defines that such a child will be one who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after.

15. The Government of India on considering the question of adopting a national charter for children to reiterate its commitment to the cause of the children, in order to see that no child remains hungry, illiterate or sick, decided to adopt the national charter for children. In clause 19 of the said charter, it has been

provided as follows:

19. Protection of "Children with Disabilities.-(a) The State and community recognize that all children with disabilities must be helped to lead a full life with dignity and respect. All measures would be undertaken to ensure that children with disabilities are encouraged to be integrated into the mainstream society and actively participate in all walks of life.

(b) State and community shall also provide for their education, training, health care, rehabilitation recreation in a manner that will contribute to their overall growth and development.

(c) State and community shall launch preventive programmes against disabilities and early detection of disabilities so as to ensure that the families with disabled children receive adequate support and assistance in bringing up their children.

(d) The State shall encourage research and development in the field of prevention, treatment and rehabilitation of various forms of disabilities.

16. Considering the above commitment of the State towards the citizens, we are of the view that the Government before deciding to allot the land in question in favour of Hotel Rashmi Plaza, which is purely a commercial venture of the Opp. Party No. 4, should have taken into consideration the requirement of the Petitioner-organisation vis-a-vis the said Hotel Rashmi Plaza.

17. In view of our above observations, instead of interfering in the matter, it would be appropriate and equitable to remit the matter back to the Government to reconsider the question of allotment of the land which has been made in favour of Hotel Rashmi Plaza represented by Opp. Party No. 4, vis-a-vis, the claim and requirement of the Petitioner-organization. The appropriate authority of the Government may make such further enquiry as would be felt necessary while reconsidering the matter and may require the Petitioner as well as the Opp. Party No. 4 to produce any document which may be relevant for the same and shall afford due opportunity of hearing to the representatives of both the Petitioner organization as well as Hotel Rashmi Plaza. While reconsidering the matter in its proper prospective, keeping in view the observations made by us above, the Government shall take a fresh decision with regard to allotment of the land which has already been allotted to Hotel Rashmi Plaza. The entire exercise should be completed within a period of three months from the date of communication of this Judgment.

18. With the aforesaid observations and directions, both the Writ Petitions are disposed of. There shall be no order as to costs.

S.B. Roy, C.J.

19. I agree.