
(2009) 01 OHC CK 0012
In the Orissa High Court
Case No : Writ Petition (C) No. 14917 of 2005

Prabhasini Nayak and Others	Vs	APPELLANT
State of Orissa and Others		RESPONDENT

Date of Decision : 14-01-2009

Acts Referred:

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

Citation : (2009) 107 CLT 588

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

Bench : Single Bench

Advocate : P.K. Mishra and S.K. Das, for the Appellant; Additional Government Advocate for Opp. Parties 1 and 2, B.M. Patnaik, R. Sharma, S.R. Singh Samant, P.R. Patnaik, P.K. Behera, B.K. Tripathy and J. Pal for Intervenor, for the Respondent

Final Decision : Allowed

Judgement

M.M. Das, J.—The Petitioners are the Ward Members of Udayapur Grama Panchayat. It is the case of the Petitioners that taking into consideration the population factor of 11 villages on the basis of 1991 census report, a proposal was submitted to constitute a new Grama Panchayat consisting of the said 11 villages. The proposal was approved by the Block Development Officer, Nuagaon and was sent to the Collector, Nayagarh on 31.5.2001. The Petitioners have pleaded that the proposal was submitted with the consent of villagers of 10 villages, out of 11, who also proposed that the village Udayapur should be the headquarters of the proposed Grama Panchayat on the ground that the said village Udayapur is a centrally located village having communication facility to all the other villages. It is historically and culturally the most important village and is also a tourist centre on account of the location of Dasarathi Pattnaik Library and Museum known as "Banchhanidhi Pathagara", Sri Aurovinda Sangrahalaya and Jadumani Sahitya Sansada. It is also the birth place of a great person, namely, Dasarathi Pattnaik popularly known as "DASIA AJA", who is the pioneer of Library movement in the State. The said village has also more infrastructure

facilities, such as, Post Office and school and vacant lands are plentifully available in the said village for construction of the Panchayat Office. However, in spite of such demand and the recommendation of the" proposal by the Block Development Officer, according to the Petitioners, on the pressure of the local M.L.A. some interpretations were made and in place of Udayapur, the name of village Sikhargochha was inserted. On the basis, of such interpolated proposal, the Government of Orissa, without causing any enquiry with regard to the suitability of village Sikhargochha, issued the notification dated 22.10.2001 under Annexure-2 to the writ petition declaring the newly constituted Grama Panchayat as Udayapur Grama Panchayat with the headquarters of the Grama Panchayat at village Sikhargochha. Against such notification, some of the villagers earlier preferred a writ petition being O.J.C. No. 16566 of 2001. This Court disposed of the said writ petition by order dated 13.12.2001 which is as follows:

13.12.2001.

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Heard.

The grievance of the Petitioners is that the reconstitution of the Grama Panchayats is in variance with the statutory provisions and the guidelines provided for the purpose. In some cases, it is also contrary to the recommendation of the Collector and on extraneous considerations.

In view of the limited nature of grievance, we direct that the Petitioners shall make representations to the Secretary to Government of Orissa, Panchayati Raj Department within a period of one week from today and the Secretary shall dispose of the said representations within two weeks from the date of filing of the same. In case the Petitioners want a personal hearing, the Secretary shall give them opportunity of hearing before disposal of the representations.

In some cases, the dispute is with regard to fixation of headquarters of the Gram Panchayats. Learned Additional Government Advocate submits that there are guidelines for fixation of Gram Panchayat Headquarters. We also find that this Court in Pramod Kumar Bohidar and Others Vs. State of Orissa and Others, , has laid down the procedure to be adopted in absence of any guidelines fixed by the Government. The aforesaid decision has been followed by this Court in a recent case - Bijay Kumar Behera and others Vs. State of Orissa and others, . We, therefore, direct the Secretary to keep the aforesaid decisions of this Court in view while disposing of the representations.

Till disposal of the representations, unless there is notification for election of the concerned Grama Panchayat, reconstitutions of the said Grama Panchayats shall remain stayed.

The writ petitions are disposed of accordingly.

2. After disposal of the said writ petition, the Petitioners in the said writ petition made a representation to the Government on 19.12.2001. After the Grama Panchayat elections, first meeting of the Grama Panchayat was convened on 10.5.2001 in which meeting, it was unanimously decided to hold the office of the Grama Panchayat at village Udayapur which is a centrally located revenue village. The copy of the resolution was forwarded to the Panchayati Raj Department, Government of Orissa seeking necessary steps. Thereafter, number of communications have been made to the Government of Orissa. The Grama Sabha again in its meeting held on 21.5.2003 unanimously resolved to have the headquarters at village Udayapur. The Petitioners have alleged that from the date of election of the members and Sarpanch of the Grama Panchayat, the office of the Grama Panchayat is functioning at village Udayapur and in the meantime, a temporary house has been constructed in the said village. In the meeting dated 31.5.2003 the Grama Panchayat again resolved unanimously to request the Government to expedite its action for locating the headquarters of the Grama Panchayat at Udayapur. When the matter stood thus, the Collector, Nayagarh issued a letter to the Sarpanch dated 23.9.2003 to shift the office of the Grama Panchayat to Sikhargochha. Being aggrieved by the said letter, the Petitioners along with another preferred W.P. (C) No. 10406 of 2003 questioning the legality of the direction/communication of the Collector with a further prayer to reconsider the question of fixing the headquarters of the Grama Panchayat at Udayapur in terms of the resolutions adopted by the Grama Panchayat. By judgment dated 28.9.2004, this Court directed the Collector, Nayagarh to reconsider the issue on considering the representations made by the villagers of village Sikhargochha and village Udayapur and further directed, that till such decision is taken, the letter issued by the Collector shall be kept in abeyance. The Petitioners were directed to file a representation before the Collector within a period of 15 days which the Collector shall reconsider. Pursuant to the above directions, the Petitioners submitted a representation before the Collector, Nayagarh along with the certified copy of the order passed by this Court. The Collector thereupon by his letter dated 19.10.2004 sought for clarification from the Government of Orissa as to how the orders passed by this Court shall be implemented. The Government by its letter dated 8.11.2004 wrote back to the Collector asking him to enquire into the matter with regard to fixation of the Grama Panchayat headquarters as claimed by the Petitioners and submit the report to the Government. The said letter of the Government reads as follows:

From:

Shri R.K. Pani O.A.S.(1), S.B. Deputy Secretary to Government.

To

The Collector, Nayagarh.

SUB: Clarification regarding implementation of order dated 16.9.2004 of Hon'ble High Court in W.P.(C) No. 10406 of 2003.

Sir,

I am directed to invite a reference to your letter No. 1169 dated 19.12.2004 on the subject noted above and to request that in order to implement the orders passed by the Hon"ble High Court in the above O.J.C. the matter may please be enquired into with regard to fixation of G.P. Headquarters at Udayapur as claimed in the writ -petition and before the Government. Hence a report to that effect may please be furnished to this Department early for finalization of this issue. The following points need to be emphasized during enquiry:

1. Whether Udayapur village is centrally located and;
2. Infrastructure and communication facilities available.
3. Operation of the G.P. in shape of operation.
4. Regarding availability of land.

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3. On getting such communication from the Government, the Collector conducted spot enquiry through the District Panchayat Officer, Nayagarh and after conducting such enquiry by his letter dated 27.11.2004 submitted his report. In the said report, the Collector summed up that village Udayapur is the most convenient and suitable place for location of the Grama Panchayat headquarters. On the above report, the Secretary, Panchayati Raj Department, Government of Orissa submitted a note, the effective portion of which is "as per report of the Collector, the matter has been enquired by the District Panchayat Officer touching all the points indicated by the High Court. The enquiry report speaks that Udayapur is the most suitable place for Grama Panchayat office of Udayapur as infrastructure facility including communication facilities are available at Udayapur. Hence, it is recommended that the Grama Panchayat headquarters should be at village Udayapur. While the matter stood thus, the Petitioners allege that the Minister, P.R. Department on political motivations called for the file and the local M.L.A. being influenced by the villagers of Sikhargochha wrote to the Minister that there has been compromise between the two groups and they have decided to have the headquarters of Udayapur. Grama Panchayat at village Sikhargocliha. The Petitioners have refuted that no such compromise was even arrived at and there was no occasion to arrive at, such compromise. Basing on the aforesaid communication of the local M.L.A. by order dated 24.11.2005, the Minister, P.R. Department, Government of Orissa, passed the order, fixing the headquarters of the Grama Panchayat at Sikhargochha instead of Udayapur. The said order of the Minister has been quoted in paragraph-20 of the writ petition which reads as follows:

No further hearing is required. Hon"ble M.L.A. Dasapalla Sri Ray was requested to take up the matter of dispute for fixation of Hqrs. of Udayapur G.P. He had discussed the matter with villagers of both Udayapur and Sikhargochha and arrived at an amicable conclusion. He has suggested to locate the G.P. building

on plot No. 391 of Khata No. 32 of Sikhargochha village. Let us accept this and communicate to collector, Nayagarh.

Sikhargochha village has the highest population and as per the provision of G.P. Act, the name of G.P. should have been Sikhargochha. But some how Govt. at a later date changed the name of G.P. to Udayapur fixing Hqrs. at Sikhargochha. This caused the disputes. Now, that after personal intervention of Hon'ble M.L.A., Sri Ray, both villagers have agreed to the location of the G.P. building on the site mentioned above.

Sd/ - Illegible

Minister, Panchayati Raj and Culture, Orissa.

The Petitioners being aggrieved by the order of the Minister quoted above have preferred this present writ petition, inter alia, making a prayer for quashing the said order and for issuance of a writ of mandamus directing the State Government in its Panchayati Raj Department to publish a notification notifying the revenue village Udayapur as the headquarters of Udayapur Grama Panchayat in consonance with the report of the Collector, Nayagarh under Annexure-11 to the writ petition.

4. Separate counter affidavits have been filed by the State as well as the intervenor-opp. party.

5. The Government in paragraphs-5 and 6 of the counter affidavit has taken a stand that in order to arrive at a decision regarding fixation of headquarters of Udayapur Grama Panchayat, the Collector, Nayagarh was asked to furnish certain information by letter dated 8.11.2004. The Collector, Nayagarh on 27.11.2004 intimated the Government that he has got the matter enquired into by the District Panchayat Officer, Nayagarh and submitted the enquiry report. On receipt of the report of the Collector, Nayagarh, when the matter was being processed the M.L.A., Dasapalla vide his letter dated 24.11.2005 intimated the Government that there was an amicable settlement amongst both the villagers of the villages and, therefore, the headquarters of Udayapur Grama Panchayat should continue at Sikhargochha. It has been further stated that the Chairman of the District Reorganization Committee, i.e. the Collector earlier recommended fixation of the headquarters at Sikhargochha and subsequently, when the views of the Collector was sought for pursuant to the order dated 28.9.2004 passed by this Court in W.P. (C) No. 10406 of 2003, the Collector recommended to fix the headquarters at Udayapur. However, the Government did not feel it proper to change the headquarters, in spite of the recommendation of the Collector and without altering the previous notification finally decided that the headquarters of the Grama Panchayat shall function at Sikhargochha. The State Government has also assigned some reasons as to why the headquarters has been fixed at Silkargochha.

6. Learned Counsel for the State also produced the connected records before this

Court. From the records of the Government, it appears that the dispute with regard to fixation of headquarters of Udayapur Grama Panchayat is continuing from the date when the said Grama Panchayat was reconstituted on bifurcation by notification dated 20.10.2001 fixing Sikhargochha as the headquarters of the Grama Panchayat. From the records, several letters of the Member of Parliament as well as Minister, Sports and Youth Services, Government of Orissa and other representatives of the people are seen asking to fix the headquarters of Udayapur Grama Panchayat at Udayapur. The Collector, who was called upon to submit a report, pursuant to disposal of the W.P. (C) No. 14006 of 2003, reported that Udayapur is the most suitable place for construction of the Grama Panchayat Office as infrastructural facilities including communication facilities are available at Udayapur. This fact appears in the note sheet submitted by the Deputy Secretary, Panchayati Raj Department, available in the produced before this Court. The statement that the dispute has been settled, made in the letter of the local M.L.A. has been denied by the Petitioners.

7. Section 3 of the Orissa Grama Panchayat Act vests the power of constituting a Grama and assigning a name to the Grama, on the Government. The Statute does not prescribe any guidelines leaving it to the discretion of the State Government to constitute a group of continuous and adjacent villages as a Grama and to assign a name of such Grama which would be the name of one of the villages comprised within the Grama. Sub-section (3) of Section 4 of the Orissa Grama Panchayat Act prescribes that the headquarters of the Grama Panchayat shall be situated in the village bearing the name of Grama unless otherwise ordered by the State Government. In the name of Pedenti Maiana and Ors. v. State of Orissa and Ors. 2004 (1) OLR 493, this Court while considering the question of fixation of headquarters of a Grama Panchayat held that the exigencies for consideration arise only in exceptional circumstances where Government may direct to situate the headquarters in some village other than the village after which the Grama Panchayat is named. A question arises as to whether the decision of the Government in fixing the headquarters of a Grama Panchayat in a village different from the village in the name of which, the Grama Panchayat has been named, can be judicially reviewed or not.

8. In view of the provisions of Sub-section (3) of Section 4 of the Act, such a decision of the Government fixing the headquarters of the Grama Panchayat in a village other than the village in the name of which the Grama has been constituted, cannot be arbitrarily done on extraneous consideration. In the case of Pramod Kumar Bohidar and Others Vs. State of Orissa and Others, this Court while considering a similar question has laid down that though the Court is not entitled to interfere with the discretion exercised by the State Government so long as the said discretion is exercised bona fide, but it would be fully entitled to interfere when it comes to the conclusion that the discretion has been exercised on extraneous considerations, has been exercised ignoring the relevant materials or the Court comes to the conclusion that such power has been exercised colourably.

9. Examining the facts of the present case in the touch stone of the above principles laid down by this Court, it would be found that when Udayapur was newly constituted as a Grama, no acceptable reasons appear in the connected file as to why the Government fixed Sikhargochha as the headquarters of the said Grama by exercising its discretion provided under Sub-section (3) of Section 4 of the Orissa Grama Panchayat Act instead of fixing Udayapur as the headquarters of Udayapur Grama Panchayat, which would have been in accordance with the provisions of the above section. After several rounds of litigations being fought, when ultimately, the Collector was called upon to submit a report, as it appears that considering all aspects of the matter, the Collector reported that the headquarters of the Grama Panchayat should be situated at Udayapur instead of Sikhargochha, only basing on a letter of the local M.L.A. which stated that the disputes between the inhabitants of the two villages have been amicably settled, the Government without applying its mind, stuck to its previous decision, retaining Sikhargochha as the headquarters of the Grama Panchayat. No enquiry whatsoever was made regarding the veracity of the letter of the local M.L.A. as to whether the disputes between the villagers have been amicably settled or not. However, settlement of the dispute between the villagers could not also be taken as the basis for fixing the headquarters of a Grama Panchayat.

10. A bare perusal of the report of the Collector shows that the Collector recommended Udayapur as the headquarters of the Grama Panchayat after taking into consideration all aspects, such as, accessibility of the said village, availability of infrastructure facilities etc. On a close scrutiny of all the materials available before this Court, this Court is of the view that the decision of the Government fixing Sikhargochha as the headquarters of the Grama Panchayat was arbitrary and on extraneous considerations, not supported by reason. This Court is, therefore, of the view that the decision dated 24.11.2005 of the Government as taken by the Minister, Panchayati Raj and Culture, Orissa quoted in paragraph-20 of the writ petition cannot be sustained. The said letter is, therefore, quashed. It is further directed that the Government shall issue notification fixing the headquarters of Udayapur Grama Panchayat at Udayapur within a period of one month from the date of communication of this order.

11. The writ petition is accordingly allowed. There shall be no order as to costs.