

(1992) 09 OHC CK 0010

In the Orissa High Court

Case No : Original Jurisdiction Case No. 3928 of 1988

Prafulla Kumar Matia Mishra and Others	APPELLANT
Vs	
State of Orissa and Others	RESPONDENT

Date of Decision : 11-09-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1993 Ori 67 : (1993) 75 CLT 105

Hon'ble Judges : B.L. Hansaria, C.J;R.K. Patra, J

Bench : Division Bench

Advocate : Dr. S.C. Dash, B.K. Patnaik, R.C. Rout and H. Panda, for the Appellant; K.K. Swain, P.C. Biswal and Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Patra, J.—The petitioners in this petition under Article 226 of the Constitution of India seek to challenge the Government decision directing shifting of M. E. section of Panigengutia-Siarimalia U.G.M.E. School (earlier known as P.S.M.E. School) to Panigengutia Talasahi U.P. School, as communicated by the Inspector of Schools, Dhenkanal in his letter dated 18-8-1988, Annexure-4.

2. The petitioners state that in a public meeting some people belonging to six neighbouring villages agreed to amalgamate Siarimalia L.P. School with the local M.E. School in July, 1975 and renamed it as "Panigengutia-Siarimalia P.S.M.E. School. The District Inspector of Schools in the letter dated 31-7-1975, Annexure-2 intimated the said decision to the Block Development Officer who took necessary steps in the matter. The petitioners allege that later the District Inspector of Schools recommended the shifting of M.E. section of Panigengutia-Siarimalia P.S.M.E. School to Panigengutia Talasahi U.P. School and to upgrade the latter to one M.E. School by renaming it Panigengutia U.G.M.E. School. On the basis of the said recommendation, the Inspector moved the Director, Elementary and Adult Education for doing the needful. It is contended that the shifting of M.E. section vide Annexure-4 has been done without assigning any

reason which has resulted in annulment of an agreed decision taken in July, 1975. The petitioners apprehension is that this may create lawlessness in the locality.

3. The inspector of Schools, opposite party No. 3, has filed counter affidavit justifying the shifting of M.E. section vide Annexure-4. Some villagers of Panigengutia (both Talasahi and Uppersahi) and Ronthapat had filed an application in this Court for intervention. The Court allowed their prayer and permitted them to file counter affidavit which they had done. Besides, disputing existence of any agreement of July, 1975 as claimed by the petitioners, their stand in common is that Government decided to open one P.S.M.E. School at Panigengutia by integrating one pre-existing primary school of Panigengutia with a proposed unrecognised Panigengutia M.E. School. As per the said decision Panigengutia M.E. School was opened was one trained graduate Headmaster was appointed to joint that school by the Inspectorate letter dated 22-1-1975, Annexure-B/3. The Headmaster also joined the school on 31-1-1975. The Block Development Officer, however, without any authority directed the Headmaster to shift Panigengutia P.S.M.E. School from the Primary School premises to the private unrecognised M.E. School premises. Against such un-, authorised action of the Block Development Officer, the inhabitants of Panigengutia represented the educational authorities to remedy the wrong done to them following shifting of Panigengutia P.S.M.E. School. The result of representations was that a joint spot inquiry was conducted by the District Inspector and Inspector of Schools. It was found by them that Panigengutia U.P. School which was up-graded in the year 1974-75 for the benefits of the students of Panigengutia was being held in a "Kutchha" structure of Siarimalia in the name of Panigengutia Siarimalia U.C.M.E. Shool with a roll strength of mere 67 in all the seven classes. The low roll strength was due to the fact that there was no feeding U.P. School at Siarimalia. They were of the view that the two primary Schools one at Tala Panigengutia and another at Upper Panigengutia were without any facility of M.E. School and during the rains, the village Panigengutia (originally so named) remained water-logged and totally cut off from Siarimalia. On account of its bad location students of Panigengutia were denied the benefit of getting education of M.E. standard. The joint inquiry further revealed that there was another M.E. School at Talabarana which could easily cater the need of both the villages Siarimalia and Talabarana situated within one kilometer. In these circumstances, the Inspector in his letter dated 24-3-1987 Annexure-H/3 recommended for shifting of the M. E. section of Panigengutia-Siarimalia U.G.M.E. School to Panigengutia Talasani U.P. School by which the wrong done earlier to the villagers of Panigengutia could be remedied. The State Government after due consideration of the matter accepted the recommendation and ordered to shift the M.E. section in the Department letter dated 6-8-1988, Annexure-K/3.

4. This Court on 17-1-1989 passed an order directing to maintain status quo as on date. Before the aforesaid order was passed, the decision of the State Government to shift the M.E. section was given effect to on 22-8-1988 as it

appears from the intimation of the District Inspector of Schools in his letter dated 20-9-1988, Annexure-L/3 and the shifting has thus already taken place.

5. The decision of the State Government for shifting of the M.E. section from Panigengutia-Siarimalia U.G.M.E. School to Panigengutia (Talasahi) U.P. School campus is purely an administrative decision. Dr. S. C. Dash, the learned counsel for the petitioners being confronted with such a decision contended that this Court can interfere in the matter as there has been violation of statutory rules and he referred to Articles 174 and 176(2) of the Orissa Education Code. He also contended that if the decision is taken arbitrarily or if by such a decision a party is forced to alter its position, this Court can stretch its hands to quash the same. He relied in this connection on a Bench decision of this Court in the case of Lokanath Raut v. State of Orissa ILR 1977 Cut 819 and a decision of the Supreme Court in the case of J.R. Raghupathy and Others Vs. State of A.P. and Others, .

6. There is no statutory provision as to under what circumstances M.E. Section of one U.G.M.E. School can be directed to be shifted to a U.P. School. The impugned decision has been taken by the State Government purely on administrative side. The Government being the best Judge of the situation has taken the conscious decision after duly considering all the relevant facts. This Court in exercise of writ jurisdiction cannot sit in appeal against such decision and cannot upset the same. While stating so we may not be understood to have laid down the law that administrative decision in no circumstances can be struck down by this Court in exercise of writ jurisdiction. For the purpose of this case we may not spell out the grounds on which such a decision can be quashed by this Court. Instead, we shall examine whether the decision at hand can be undone on the grounds advanced by Dr. Dash.

7. The contention that there was violation of Articles 174 and 176(2) of the Orissa Education Code (hereinafter referred to as "the Code") when the Government ordered for shifting of the M.E. Section does not appeal to us. Though the provisions contained in Article 174 and 176 (2) of the Code have statutory force, in view of Section 27(4) of the Orissa Education Act, but they are of little assistance to the petitioners. Article 174 of the Code deals with the power of recognition of a school as a Primary School by the District Inspector or Deputy Inspector. Article 176(2) of the Code stipulates that if a recognised school ceases to exist or is transferred to a different locality without sanction of the proper authority, its recognition lapses and for the purpose of future recognition, it shall be treated as a new school. The provisions aforementioned have nothing to do with the decision of the Government in directing shifting of M.E. Section from one school to another.

8. The learned counsel for the petitioners relying upon the case of Lokanath Raut v. State of Orissa ILR 1977 (1) Cut 819 submitted that this Court can interfere with the administrative decision of the present type. What had happened in that case was that the Joint Director, Public Instructions directed shifting of one U.P.

School from one village to another. In the return filed in the case by the concerned school authorities no clear picture was given. This Court found that the stand taken by the authorities "has not been reflected in the papers placed before it". The Court further noted that "behind the decision for shifting of the school there were certain other considerations which have not been placed before the Court". In the facts and circumstances and by applying the principle of estoppel the Court quashed the decision of the Government. In the case before us, however, there is no suppression of facts by the opposite parties and the reasons behind the decision for shifting of M.E. Section have been clearly spelt out. There is also no scope in the present case for invoking the principle of estoppel inasmuch as the petitioners had not acted upon or altered their position on the basis of any assurance given by opposite parties. According to us, ratio of that case cannot be applied to the present case.

9. Learned counsel for the petitioners next referred to the case of J.R. Raghupathy and Others Vs. State of A.P. and Others, and contended that the impugned decision is liable to be quashed as the same was taken arbitrarily. We do not find anything on record to hold that the decision of the State Government in the matter was arbitrary or was not taken in good faith or was influenced by any extraneous or irrelevant consideration. From the narration of facts, it may be seen that the State Government had taken the decision to remedy the injustice done to the villagers of Panigengutia. The Inspector after causing necessary spot inquiry submitted the report suggesting for shifting of the M.E. Section of Panigengutia-Siarimalia U.G.-M.E. School to Panigengutia-Talasani U.P. School campus. On the basis of such recommendation, the Government took the decision. We do not find any arbitrariness in the decision taken by the State Government. There is no specific allegation of mala fide against the State Government nor anything was brought to our notice that the decision was based on any extraneous or irrelevant consideration.

10. At this stage, it is relevant to mention briefly facts of J.R. Raghupathy. A number of writ petitions were filed in the Andhra Pradesh High Court challenging the location of Mandal Headquarters on the grounds, inter alia, that there was violation of the guidelines in taking decisions. The High Court dismissed some of the writ petitions but in respect of some others they were remitted to the State Government for reconsideration of the question of location of Mandal Headquarters. In some of the cases the High Court directed for issue of fresh notification for location of Mandal Headquarters. When all the matters came up before the Apex Court, their Lordships did not approve the decision of the High Court relating to quashing of the notification which were made on the alleged breach of guidelines. Their Lordships in para 18 of the judgment after referring to G. J. Fernandez's case observed as follows:

".....That precisely is the position here. The guidelines are merely in the nature of instructions issued by the State Government to the Collectors regulating the manner in which they should formulate their proposals for information of a

Revenue Mandal or for location of its Headquarters keeping in view the broad guidelines laid down in Appendix I to the White Paper. It must be stated that the guidelines had no statutory force and they had also not been published in the official Gazette. The guidelines were mere departmental instructions meant for the Collectors. The ultimate decision as to formation of a Revenue Mandal or location of its Headquarters was with the Government....."

Their Lordships further went on to observe as follows:

".....There is nothing on record to show that the decision of the State Government in any of these cases was arbitrary or capricious or was one not reached in good faith or actuated with improper considerations or influenced by extraneous considerations or a matter like this, conferment of discretion upon the Government in the matter of formation of a Revenue Mandal or location of its Headquarters in the nature of things necessarily leaves the Government with a choice in the use of the discretion conferred upon it".

In the penultimate paragraph of the judgment, their Lordships held as follows:

".....the High Court would not have issued a writ in the nature of mandamus to enforce the guidelines which were nothing more than administrative instructions not having any statutory force, which did not give rise to any legal right in favour of the writ petitioners".

11. In the present case there is no violation of even any policy guidelines. No other contention was urged in support of the writ petition which fails and is accordingly dismissed. The delay in delivery of judgment has occurred because the Counsel for the State took time repeatedly till 8-9-92 to produce the file which was ordered to be produced on conclusion of the hearing on 28-7-92 within 10 days, which ultimately could not be done.

B.L. Hansaria, C.J.

12. I agree.