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**(2007) 01 OHC CK 0029**

**In the Orissa High Court**

Ram Krishna Padhy and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

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**Date of Decision :** 24-01-2007

**Acts Referred:**

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

**Citation :** (2007) 103 CLT 686 : (2007) 1 OLR 587

**Hon'ble Judges :** N. Prusty, J; I.M. Quddusi, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## **Judgement**

I.M. Quddusi, J.—The instant Writ Petition has been filed by the Petitioners, of whom Petitioner No. 1 is the Naib Sarpanch and Petitioner Nos. 2 to 8 are the Ward Members of Bilamala Grama Panchayat, challenging the Government notification dated 10.2.2004 fixing the office Headquarters of the Gram Sasan of Gram Bilamala in Tumudibandha Block of Kandhamal District at village Khadapanga u/s 4(3) of the Orissa Gram Panchayat Act (hereinafter called "the Act") issued by the Government of Orissa, Panchayati Raj (GP) Department.

2. The brief facts of the case are that the Bilamala Gram Panchayat was constituted on 20.10.2001 in exercise of powers conferred on the State Government by Section 3 read with Section 149 of the Act. Against fixing of Headquarters of the said Gram Panchayat at Bilamala, some persons made representations before the State Government and when no decision was taken thereon, the writ application registered as W.P. (C) No. 7508 of 2003 filed by them in this Court was disposed of vide Order dated 29.9.2003 with the direction to dispose of the representations of the Petitioners and communicate the decision within two months and till a final order is passed, the Headquarters of Gram Panchayat will not be constructed. Thereafter, the Government asked the Collector to examine the matter and submit his report, on which the Collector asked the Sarpanch to convene a meeting of Gram Panchayat for discussion regarding shifting of the Headquarter of the Gram Panchayat. Thereafter, the

Gram Panchayat passed a resolution on 9.12.2003 for shifting of the Headquarters of Bilamala Gram Panchayat from Bilamala to Khadapanga. Subsequently, the Panchayat Samiti concerned passed a similar resolution. Thereafter, the Collector submitted his report after getting necessary verification done vide his letter dated 7.1.2004. The relevant portion of the letter of the Collector is quoted as under:

Because of persisting dispute, the Sarpanch Bilamala is not holding the G.P.s monthly meeting at the G.P. Headquarter and has been holding the G.P. meeting at different places. It was alleged before me by the villagers of Bilamala during my field visit that because of misunderstanding and dispute between Ward members the 8 members who are opposed to the Sarpanch are not being invited to the G.P. meeting and no development work worth the name is being done in that area. But the allegations has no basis.

At Bilamala village there is a patch of 7.00 Ac. of Anabadi land in one compact patch over a portion of which G.P. godown building has already been constructed. On the other side in Village Khadapanga there is no Government Anabadi leaseable land available as ascertained from the Tahasildar. But, three villagers have donated AC.2.00 (two acres) of land in favour of the G.P. for the purpose of construction of the G.P. office building thereon. There is not much of difference between these two places. But the dispute has led to an impasse and the activities of the G.P. have come to stand still. So, considering the demand of majority people & in the greater interest of the G.P, its Headquarters at Khadapanga will be more feasible.

The G.P. in their meeting dated 9.12.2003 (copy enclosed) have resolved and recommended for change of Headquarter of the G.P. from Bilamala to Khadapanga.

The Panchayat Samiti in their meeting on 16.12.2003 had a discussion on this matter and they had also recommended to rename the GP as Khadapanga with its Headquarters at Khadapanga.

In view of the above, Government orders in the matter is solicited.

3. It appears that in the GP meeting held at Khadapanga Primary School in which 11 members were present, a resolution was passed for shifting of the Headquarters of GP from Bilamala to Khadapanga. The members of the Panchayat Samiti concerned vide resolution No. 12 considered the situation as under:

- a. The location of this village is convenient for all villagers and wards.
- b. Good communication facilities are available from this village to Medical, Police Station, KAGB Bank, High School, Sevasrama, VAS Belghar, Revenue Office, Range Office and Block.
- c. Since village Khadapanga is centrally located, the same is convenient for

marketing.

d. The Sarpanch has got two acres of land on gift for construction of the G.P. Office.

On the above basis, the Panchayat Samiti concerned had passed a resolution for shifting of the Headquarters of Gram Panchayat from Bilamala to Khadapanga.

4. It appears from page Nos. 11 and 12 of the note-sheet of the concerned record dated 4.2.2004 that the State Government has thoroughly considered the report of the Collector along with the resolution of the concerned Panchayat Samiti and the Gram Panchayat and had taken a decision on their basis. There was an allegation that the Panchayat resolution was a fake resolution, but the Collector got it verified and mentioned in his above quoted portion of his report that the same had no basis. Besides this, there was a resolution of Panchayat Samiti mentioning the geographical and other situations of village Khadapanga. Therefore, it cannot be said that the Government had not applied their mind before taking a decision regarding shifting of Headquarters.

5. In the case of Asif Hameed and others Vs. State of Jammu and Kashmir and Others, it has been held that while exercising power of judicial review of administrative action, the Court is not an Appellate authority. The Constitution does not permit the Court to direct or advise the executive in matters of policy or to sermonize qua any matter, which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory power.

In a recent decision of the Hon'ble Apex Court in the case of Union of India and others V. Flight Cadet Ashish Rai, reported in 2006 (1) SC 271 the Apex Court held that there should be judicial restraint while making judicial review in administrative matters. The principles laid down therein in respect of judicial review are as under:

The duty of the Court is (a) to confine itself to the question of legality; (b) to decide whether the decision making authority has executed its powers (c) committed an error of law (d) committed breach of the rules of natural justice and (e) reached a decision which no reasonable Tribunal would have reached or (f) abused its powers.

In the case of Bijay Kumar Behera and others Vs. State of Orissa and others, this Court has held that so long as the discretion is exercised by the Government bona fide, the Court cannot interfere with but if it is exercised arbitrarily basing on extraneous considerations or has been exercised ignoring relevant materials, the Court can interfere as the same was without application of mind.

6. In view of the above discussion, there is no scope for judicial review when it cannot be said that the decision of the State Government is arbitrary or without application of mind. Thus, the Writ Petition has no force and is, therefore, dismissed. No order as to costs.

N. Prusty, J.

7. I agree