

**Pitabas Panda Vs. State of Orissa and Others**

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**Court :** Orissa

**Decided On :** Nov-14-2012

**Appellant :** Pitabas Panda

**Respondent :** State of Orissa and Others

**Judgement :**

ORISSA HIGH COURT: CUTTACK WRIT PETITION (CIVIL) No.27309 of 2011 In the matter of an application under Article 226 and 227 of the Constitution of India. -----Pitabas Panda Petitioner -VersusState of Orissa and others .. \_\_\_\_\_ Opp. Parties For Petitioner : Ms. Deepali Mohapatra, S. Parida. For Opp.party : Mr. R.K. Mohapatra, Government Advocate PRESENT: THE HONOURABLE THE CHIEF JUSTICE SHRI V.GOPALA GOWDA AND THE HONOURABLE SHRI JUSTICE B.K.MISRA Date of judgment : B.K.MISRA,J.The petitioner, who is 14.11.2012 an advocate of Ganjam Bar Association and social activists has approached this Court for a direction to the opposite parties for opening of the main gate of M.K.C.G., Medical College and Hospital facing towards the New Bus Stand, Berhampur, which had been closed by the authorities without any rhyme or reason.

2. It is the case of the petitioner that to provide better medical facilities the State Government has established M.K.C.G., 2 Medical College and Hospital at Berhampur and patients from places like Kandhamal, Bhanjanagar, Aska and other places of southern districts come to Berhampur to get medical treatment there. It is the further case of the petitioner that from the inception of the Medical

College and Hospital in question there exists two main gates i.e. one located by the side of National High Way No.217 and the other one located facing the New Bus Stand. Such gates have been renovated by the Government by spending huge money and those gates have been erected for the patients and public who can come to the hospital easily. But the authorities abruptly without assigning any reason closed the second gate which is located near the New Bus Stand causing immense suffering to the people as they have to come to the Hospital through the main gate by travelling almost two kilometers. It is alleged that against such closure of the second gate, the denizens of Berhampur City when represented to the authorities they were told that because of security reasons the decision has been taken to close the gate in question. Thus, when the people in general have been deprived of availing medical facilities and when they have been prevented from coming to the hospital in question through the second gate and when the authorities did not consider the genuine demands of the people, finding no other efficacious way the petitioner being a public spirited citizen of Berhampur Town has approached this Court for the relief as has been mentioned above

3. The opposite party No.2 has filed his counter affidavit wherein it is his case that because of mischief and anti-social activities of hooligans and transporters the gate of the Medical College and Hospital facing the New Bus Stand road has been closed by the administration since inception of the college and patients are coming to the hospital through the main gate and there has been no casualty so far reported in coming to the hospital through the main gate. Only to keep the atmosphere of the medical college and hospital free from sound, noise, environment pollution and to avoid any untoward incident on account of free movement of anti-social elements the administration as well as the medical authorities took the conscious decision for closing the second gate which situates near the New Bus Stand, Berhampur City. Besides that it is his further stand that the students union of M.K.C.G., Medical College, Berhampur had represented to the Revenue Divisional Commissioner (Southern Division), Berhampur not to open the gate in question for security reasons. It is also averred that when there is provision for pathway by the side of the second gate in question for the movement of the general public and patients and there is no barrier for movement of cycles and two wheelers on either side of the gate of the medical college which is being

used and when nobody has been deprived of coming to the Medical College and Hospital for receiving treatment the writ petition has been filed with an ulterior motive

4. It is the specific stand of opposite party no.2 that to avoid any mishap and to prevent straying of mentally challenged persons since the Psychiatric Ward situate at a close proximity of the gate in question, the closure of the 2nd gate in question was felt very much essential and has been closed which in no way has caused any inconvenience to any person. It is alleged that the petitioner has come up with the present writ petition in the guise of a Public Interest Litigation being tainted with extraneous and ulterior motives and the same being devoid of any Public Interest should be dismissed.

5. We have given our anxious hearing to the matter. At the outset coming to the point as to whether the writ petition is a genuine Public Interest Litigation which is filed by an practicing lawyer espousing the public cause, we observe that the Rules 8 and 9 of the PIL Rules, 2010 of the Orissa High Court has not complied with by the petitioner. Therefore, when the Rules prescribe to do a particular thing in a particular manner, such non-compliance of the statutory Rules in this case is fatal and in that context we have referred to the case of Babu Verghese and others v. Bar Council of Kerala and others, AIR 199.SC 128.and a decision of this Court in W.P(C) No.26393 of 2011, Niranjana Tripathy v. State of Orissa and others, 114(2012) CLT 709.On this ground only i.e., non-compliance of the mandatory Rules of Rules 8 and 9 of the PIL Rules, 2010 framed by this Court, the writ petition is not maintainable and is liable to be dismissed

6. Besides that from the materials placed on record we find from the letter of the Collector and the District Magistrate, Ganjam, Berhampur dated 19.8.2011 marked as Annexure-A/2 that in a meeting held on 10.8.2011 the Principal of M.K.C.G. Medical College and Hospital complained that the old gate which is connecting the new Bus Stand is being used as a thoroughfare for plying of vehicles and he requested that the same is to be closed for ensuring safety and security of the campus and students and accordingly, it was decided to convene a meeting by the Sub-Collector, Berhampur inviting the representatives of the locality, Executive

Engineer (R & B), Superintendent, M.K.C.G. Medical College and Hospital, Berhampur to take a decision in the matter.

7. Annexure-B/2 is the proceedings of the meeting held on 29.8.2011 under the Chairmanship of Sub-Collector, Berhampur which was attended by the M.L.A. Berhampur, Tahasildar, Berhampur, the Principal, M.K.C.G. Medical S.N. Mahanty, S.D.P.O. College and Berhampur, Hospital, the Berhampur, Engineers of Dr. different organizations and the Corporator of Ward No.30. In the said meeting it was decided that the rear gate of the M.K.C.G. Medical College and Hospital will be totally closed and can only be opened at the time of emergency and during the visit of VVIPs and under no circumstances, the rear gate is to be opened. It was further decided that all the Ambulances will move through main gate only. Our attention was also invited to Annexure-C/2 and Annexure-D/2 which highlights the plight of the students of M.K.C.G. Medical College and Hospital, Berhampur by the opening of the back gate which had been closed since 40 years. The materials so placed before us shows that the rear gate was closed since the inception of the Medical College in question and it was a conscious policy decision of the authorities concerned for the safety and well being not only of the patients but also the students who prosecute their studies in medicine and other disciplines of medicine. Preseverance of the study atmosphere as well as a conducive atmosphere in the hospital for the patients is definitely the paramount consideration not only of the authorities of the Medical College and Hospital as well as of the administration and the public at large. When the authorities concerned including the local representatives of the people of the Berhampur City have taken a conscious decision to close the rear gate of the M.K.C.G. Medical College and Hospital, Berhampur and when the authorities exercised their best discretion in the matter, the same calls for no interference by this Court as we find no malafide on the part of the authorities in closing the rear gate.

8. It is the settled law that the Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy, not are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the

Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts 7 cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy and not the wisdom or soundness of the policy is the subject of judicial review. (2007) 4 SCC 737. Directorate of Film Festival and others v. Gaurav Ashwin Jain and others, (2005) 13 SCC 495. State of Orissa and others v. Gopinath Dash and others.

9. Thus, keeping in mind the aforesaid position of law enunciated by the Apex Court we are of the firm opinion that in assessing the propriety of the decision of the authorities to close the rear gate i.e. western gate of M.K.C.G. Medical College and Hospital, Berhampur by the authorities, this Court cannot interfere even if a second view is possible in the matter. Here we feel apt to quote the views of the Supreme Court United States in Metropolis Theater Co. v. City of Chicago. The problems of Government are practical ones and may justify, if they do not require, rough accommodations, illogical it may be, and unscientific. But even such criticism should not be hastily expressed. What is the best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere errors of Government are not subject to our judicial review..

10. In the conclusion considering the entire facts scenario of this case and the position of law as set out above, we are not persuaded to grant the reliefs as has been prayed for by the petitioner 8 and we do not find any justifiable reason to interfere with the decisions of the authorities concerned for closure of the western gate of M.K.C.G. Medical College and Hospital, Berhampur (rear gate) facing towards the New Bus Stand, Berhampur City. Thus, the writ petition being devoid of merit stands dismissed, but in the circumstances without any cost. . B.K.Misra, J.V.Gopala Gowda, C.J.I agree. V.Gopala Gowda, C.J. Orissa High Court, Cuttack 14th November, 2012/ R.N.Sahoo

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