

Pramod Kumar Bohidar and ors. Vs. State of Orissa and ors.

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Court : Orissa

Decided On : Dec-13-1991

Reported in : 73(1992)CLT692; 1992(I)OLR392

Judge : G.B. Pattnaik and ;D.M. Patnaik, JJ.

Acts : Orissa Grama Panchayat Act, 1960 - Sections 3

Appeal No. : Original Jurisdiction Case No. 3484 of 1991

Appellant : Pramod Kumar Bohidar and ors.

Respondent : State of Orissa and ors.

Advocate for Def. : Addl. Govt. Adv. and ;H.S. Misra, Adv.

Advocate for Pet/Ap. : P.K. Misra, Adv.

Disposition : Application allowed

Judgement :

G.B. Pattnaik, J.

1. Petitioners are the inhabitants of different villages of Udar Gram Panchayat in the district of Bolangir. In this writ application, they challenge the notification of the State Government dated 26th of June, 1991, annexed as Annexure-2, by which notification the name of the Grama Panchayat has been changed to Sirabahal, as

well as the order of the District Panchayat Officer dated 10-7-1991, annexed as Annexure-3, directing shifting of the Gram Panchayat Office from Udar to Sirabahal. Their case in a nutshell is that the State Government by notification dated 3-11-1983 constituted Udar Grama Panchayat consisting of ten contiguous villages as per Annexure-1 and taking into account all relevant factors, the name of the Panchayat was named as Udar Grama Panchayat with headquarters at Udar. Subsequent to such constitution, the Grama Panchayat building has been constructed at the said village at a huge cost and several other infrastructures have been provided. There is a post office and a U.P. School and while the Grama Panchayat was functioning at Udar, the State Government arbitrarily issued the impugned notification under Annexure-2 dated 26-6-1991 changing the headquarters of the Grama Panchayat from Udar to Sirabahal and the consequential order for shifting of the headquarters by the District Panchayat Officer under Annexure-3. It has been averred that the aforesaid change under Annexure-2 is a colourable exercise of power and the Government without taking into consideration the relevant factors has whimsically changed the name and has shifted the headquarters of the Grama.

2. During the pendency of the writ application, several villagers of village Sirabahal made an application for intervention inter alia, on the ground that it is at their behest the name of the Grama Panchayat has been changed and the headquarters has been changed and, therefore, they should have an opportunity of hearing and the prayer for intervention has been allowed. Their case is that originally 13 villages under Deogaon Block were constituted into a Grama Panchayat with the name Sirabahal in the year 1981. By some political influence the same name was changed to Udar in the year 1983 as per Annexure-1. The villagers of Sirabahal moved the High Court against the said change in OJC No. 2481 of 1983 and the High Court did not entertain the same but observed that it would be open for the parties to move the Government for re-consideration and pursuant to this observation, the villagers of Sirabahal made a representation to the State Government. The Government duly considered the representation and after obtaining report from the Collector and on applying mind to the same he directed that the Grama Panchayat should be named as Sirabahal Grama Panchayat which was originally there and such order of the Government is

immune from interference by this Court, inasmuch as it has been done in the interest of the welfare of the Panchayat.

On behalf of the State though no counter affidavit has been filed, but learned Additional Government Advocate has produced the relevant file which contains the necessary materials for passing of the order under Annexure-2.

3. The short question that arises for consideration is whether the order of the State Government deciding to change the name of the Grama Panchayat to Sirabahal with headquarters at Sirabahal is a bona fide order after taking into consideration all relevant factors and being of the opinion that it would subserve the interest of all the inhabitants of the Grama at large, or it is merely a colourable exercise of power not supported by any materials and has been arbitrarily passed by the State Government. The power to constitute a Grama and to assign a name to such Grama is derived from Section 3 of the Orissa Grama Panchayat Act (hereinafter referred to as the 'Act'). No guideline has been fixed in Section 3 for the purpose of assigning any name to a group of contiguous villages and, therefore, it is the discretion of the State Government to constitute a group of continuous villages as a Grama and to assign such Grama a name which shall be one of the villages comprised within the Grama. But that discretionary power has to be exercised on relevant considerations and cannot be permitted to be exercised on extraneous considerations. 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 or has been exercised ignoring the relevant materials or the Court comes to the conclusion that the power has been exercised colourably. Within the aforesaid narrow compass, the action of the State Government under Annexure-2 has to be considered.

4. We have carefully examined the relevant files produced before us. The records indicate that in the year 1983, the Collector, Bolangir, submitted the proposal for re-organisation of Gramas to the State Government in view of the increased population, geographical barrier with regard to formation of Gramas and re-delimitation of Gramas. The Collector's proposal was preceded by reports from the

Sub-divisional committees which went into the details of each of the existing Gramas. This proposal of re-organisation was finally accepted by the Government and Sirabahal Grama Panchayat was constituted under Deogaon Block by notification dated 14th of October, 1983. Subsequently, 3 of the villages from Sirabahal Grama Panchayat were excluded being villages of Raipal, Ratanpur and Guchiapalli and were included in Deogaon Grama Panchayat and rest of the villages were constituted as a Grama which was named as Udar Grama Panchayat and notification was issued on 3rd November, 1983 to that effect. This was done in exercise of power under Sub-section (2) of Section 3 of the Act and the change of the name of the Grama was done because of the exclusion of three villages from the erstwhile Grama. While the aforesaid change was effected pursuant to exclusion of three villages, the State Government duly considered the public interest as well as all other relevant factors and decided the Grama to be named as Udar with headquarters at Udar. When villagers of Sirabahal assailed the said order before this Court in OJC No. 2431 of 1983, this Court did not think it appropriate to interfere with the order in view of the stand taken by the State Government that the re-constitution of the Grama and the location of its office has been done in the interests of the welfare of the Grama Panchayat. The petition, therefore, was withdrawn on the learned counsel for the petitioner making a statement that he will move the Government for re-consideration. There was no direction from this Court in that regard. However, after withdrawing the said writ petition, the villagers of Sirabahal made an application to the State Government. The Government called for a report from the District Collector. The Collector in his report to the Government clearly indicated that both Udar and Sirabahal would be equi-distant from the other villages included in the Grama. The population of village Udar being the highest, the Grama had been given the name Udar with headquarters at Udar and more than Rs. 40,000/- has been spent for construction of Grama Panchayat House and Rs; 10,000/-has been spent for a kine house and, therefore, it will not be advisable to change the name of the Grama or to shift the headquarters from Udar to Sirabahal. Notwithstanding the aforesaid report of the Collector, the concerned Minister directed to have the headquarters at Sirabahal instead of Udar as Sirabahal would be centrally located in respect of the group of contiguous villages constituting the Grama. The order of the Minister in the file no

doubt refers to the report of the Collector, but where as the Collector's report indicates that both Udar as well as Sirabahal would not be centrally located, yet the Minister has come to the conclusion that Sirabahal would be centrally located. There is not an iota of material for the aforesaid conclusion of the concerned Minister. A scrutiny of the file further indicates that M. L. A., Sonapur, had requested the Government to consider the case for location of Grama Panchayat headquarters of Udar Grama Panchayat at Sirabahal. It is possibly this request of the concerned M. L. A. that had weighed with the Minister concerned to pass the impugned order, though it is not reflected in the order itself, as otherwise, the positive recommendation of the Collector not to shift the headquarters for good grounds indicated in his report could not have been ignored without any reason for the same. It is undoubtedly true that the power lies with the concerned Minister to take an appropriate decision, but in taking that decision the Minister must consider all the relevant materials. Not only the State Government in the earlier writ application has filed a positive affidavit in this Court that the headquarters of the Grama had been fixed at Udar after the reconstitution in the interests of the welfare of the Grama Panchayat, but also the Collector who was called upon to enquire and report about the proposal of change of name of the Grama and shifting of headquarters had clearly indicated that in view of the huge amount already spent for construction of the Grama Panchayat Office and the kine house and since both the villages Udar and Sirabahal would be almost equi-distant from the group of villages, it would be advisable not to change the name or shift the headquarters, the conclusion of the concerned Minister to the effect that Sirabahal is centrally located is based on no materials and, on the other hand, is based on not considering the relevant materials on which the Collector had advised not to shift the headquarters. In the aforesaid premises, in our considered opinion, the concerned Minister has not exercised his discretionary power on relevant considerations and keeping the public interest in view, but on the other hand, has exercised that power on extraneous considerations and the said exercise of power is nothing but a colourable exercise of power. In view of the aforesaid conclusion, we have no hesitation to quash the notification issued under Annexure-2 and the consequent direction under Annexure-3 and we accordingly quash the same. Necessarily, therefore, the notification under Annexure-1 remains valid and

operative.

The writ application is accordingly allowed. There will, however, be no order as to costs.

D.M. Patnaik, J.

11. I agree.

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