

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A.No.1512 of 2022

Jayaram Nayak & others **Appellants**

Mr. S. Satapathy, Advocate

-versus-

State of Odisha & others **Respondents**

Mr.P.K.Mohanty, ASC

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S.SAHOO

ORDER
29.11.2022

Order No.

Hybrid Mode

1. 1. This intra court appeal has been filed challenging the order dated 27.09.2022 passed by this Court in W.P.(C) No.18864 of 2022.

By the said order dated 27.09.2022, the learned Single Judge was pleased to dismiss the writ petition, filed by some villagers of village-*Panikata*, Grama Panchayat-*Purohitpur* in the district of Khurda raising a grievance alleging inaction of the opposite party no.1: Principal Secretary, Panchayatraj Department not considering the grievance of the petitioners as per their representation dated 23.12.2020 (Annexure-4 to the writ petition) and also alleging non consideration of the resolution dated 25.07.2022 of the Purohitpur Grama Panchayat (Annexure-5 to the writ petition) taking a decision fixing the headquarter of the newly created Purohitpur G.P. comprising of five Gramas, at village-*Panikata*, instead of village-*Purohitpur* as decided by

the authority. It is contended such location at *Panikata* would be for the convenience of maximum villagers.

2. In the writ petition, in response to the notice issued by this Court, the opposite party nos.2 and 4, i.e., Collector & District Magistrate, Khurda and District Panchayat Officer, Khurda have filed their counter dated 29.08.2022 stating the reasons for the decision of the appropriate authority to locate the headquarter at *Purohitpur*, stating the following :

“6. ... As such the population of Purohitpur, Chadheibar, Singirisasan, Panikata & Barijanaga village is 1110,766,920,976 & 717 respectively as per 2011 census. Since the population of Purohitpur village is the highest in comparison to other villages & it comes under the third category. Hence priority has been given to Purohitpur to cover the village as G.P. headquarter. Thereafter, in exercise of the powers conferred by section 3 read with sub-section (3) of section 4 and section 149 of the Odisha Grama Panchayat Act, 1964 (Odisha Act 1 of 1965), the State Government declared that group of contiguous villages as grama and constitute a grama sasan for each of the said grama. Therefore, Purohitpur has been selected as the headquarters for the following set of villages namely 1. Purohitpur, 2. Chaddeibar, 3. Singirisasan, 4. Panikata, 5. Barijanga. Therefore, Purohitpur is to be prioritized for construction of Gram Panchayat Headquarter based on the principles laid down in the aforesaid notification.”

7. That, moreover as per the Notification No.10729/PR dated 01.07.2015, it has been specifically stated that the Gram Panchayat building shall be accessible from all the villages,

with the maximum limit being set to that of 5 kms. For reference clause-7 is reproduced below :

“The distance factor from the farthest village to the proposed Grama Panchayat headquarter should be around 2-5 Kms. While selecting the G.P. Headquarters, proper care should be taken that the proposed G.P. headquarter is easily approachable from the tagged villages, centrally located and administratively convenient to the people. Overall, the average population of the Gram Panchayat should be around 5000”

In the present case, all the villages are well within 5 kms, with the farthest being 4.8 kms away from the Gram Panchayat.”

3. In considered opinion of this Court, the above statement of fact that the Panchayat headquarter at village- *Purohitpur* is located at almost equal distance from all the five villages constituting the Grama Panchayat goes to show that the decision to locate at *Purohitpur* cannot be faulted with.

4. Learned counsel for the appellant on being repeatedly asked by the Court, has not been able to point out any provision of the Odisha Grama Panchayat Act, 1964 or the Rules made thereunder that bars locating headquarter of the Grama Panchayat at a place for the reasons as stated in the counter affidavit. This Court also takes note that one of the reasons that weighed with the learned Single Judge deciding not to interfere is the fact that the Grama

Panchayat building has been constructed and the cement concrete roof of the building has been cast, incurring substantial expenditure from the public exchequer.

5. Otherwise, also in considered opinion of this Court, it has to be observed that the decision regarding location of Grama Panchayat is part of the executive function of the Government, where this Court should refrain from interfering, unless some illegality is pointed out in the decision making process. In the present case, no such illegality has been pointed out in the decision making process of locating the Grama Panchayat at-Purohitpur. Further the petitioner factually has not been able to establish any reason to shift the Grama Panchayat to any other location.

6. Learned counsel for the petitioner relies on a decision of this Court rendered by a division Bench reported in **Pramod Kumar Bohidar & others v. State of Orissa and others: 73 (1992) C.L.T. 692**. At paragraph-3 it has been observed :

“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 ail 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."

In our considered opinion reliance placed by the learned counsel for the petitioner on *Pramod Kumar Bohidar* (supra) is of no avail as in the case at hand, after consideration of the pleadings of the opposite parties it has to be held that the decision to establish of the Grama Panchayat headquarter at the village-*Purohitpur*, has been taken based on relevant considerations those are germane to the issue and, therefore, the decision cannot be interfered with by this Court.

7. For aforesaid conclusion, this Court further takes note of the law laid down by Hon'ble the Supreme Court as indicated herein. The Hon'ble Supreme Court in ***B.N.Shankarappa v. Uthanur Srinivas (1992) 2 SCC 61***, relying on an earlier decision rendered in ***J.R.Raghupathy v. State of A.P. (1998) 4 SCC 364***, considering the scope of judicial review of a decision taken by the appropriate authority regarding locating *Mandal* headquarter under the provisions of Karnataka Zila Parishads, Taluk Panchayats Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983, has held at paragraphs-7 and 8 of the SCC) :

“7. As pointed out earlier Section 4(1) empowers the Deputy Commissioner to do two things, namely, (i) to declare an area as a Mandal, and (ii) to specify its headquarter. The word ‘also’ preceding the words ‘specify its headquarter’ cannot be understood to convey that the power once exercised would stand exhausted. Such a construction sought to be placed by counsel for the respondent does not accord with the language of the provision. It merely conveys that when the Deputy Commissioner constitutes a Mandal for the first time it will be necessary for him to specify its headquarter also. This power to specify the headquarter conferred on the Deputy Commissioner can be exercised from time to time as occasion requires by virtue of Section 14 of the Karnataka General Clauses Act. The attention of the High Court was not drawn to the provision in Section 14 when it disposed of the Writ Appeal No. 2564 of 1987 and Writ Petition No. 375 of 1989 on May 28, 1991. It is true that the power conferred by sub-section (2) of Section 4 can be exercised where there is a change in the area of the Mandal either by addition or reduction in the area. Under clause (c) of sub-section (2) of Section 4 the Deputy Commissioner is also invested with the power to alter the name of any Mandal. The scheme of sub-

section (2) would, therefore, show that when there is any increase or decrease in the area of any Mandal, the Deputy Commissioner may, after the previous publication of the proposal by notification, exercise that power and rename the Mandal, if so required. The absence of the power in sub-section (2) of Section 4 to specify the headquarter afresh does not necessarily mean that once the initial constitution of the Mandal takes place and the headquarter is specified the power is exhausted, notwithstanding Section 14 of the Karnataka General Clauses Act. If such an interpretation is placed on the scheme of Section 4 of the Act neither the Deputy Commissioner nor any other authority will thereafter be able to alter and specify any other place as the Mandal's headquarter. Such a view would create a vacuum and even when a genuine need for specifying any other headquarter arises, the authorities will not be able to exercise power for want of a specific provision in the Act and that may lead to avoidable hardship and complications. It is, therefore, essential that we read the provision of the Act in a manner so as to ensure that such a vacuum does not arise and the power is retained in the concerned authority which can be exercised should a genuine need arise. In J.R. Raghupathy v. State of A.P. [(1988) 4 SCC 364] this Court observed that the ultimate decision as to the place or location of Mandal headquarter is left to the government to decide and conferment of discretion upon the concerned authority in that behalf must necessarily leave the choice to the discretion of the said authority and it would not be proper for the courts to interfere with the discretion so exercised. This is not to say that the discretion can be exercised in an arbitrary or whimsical manner without proper application of mind or for ulterior or mala fide purpose. If it is shown that the discretion was so exercised it would certainly be open to the courts to interfere with the discretion but not otherwise.

8. We are, therefore, of the opinion that if the situation so demands and there is justification for altering the place of headquarter, it would be open to the Deputy Commissioner to exercise power under Section 4(1) of the Act read with Section 14 of the Karnataka General Clauses Act to meet the situation. We, therefore, allow

this appeal, set aside the impugned order of the Division Bench of the High Court and restore the order of the learned Single Judge directing that the writ petition, which gave rise to the writ appeal, shall stand dismissed. However, in the facts and circumstances of the case there will be no order as to costs.”

(Emphasis Supplied)

In the case at hand, nothing has been pointed before the present appellate Court or the learned Single Judge to show that the decision to locate the Grama Panchayat Headquarter at village-*Purohitpur* was taken by exercising the discretion vested in the authority in an arbitrary in whimsical manner or without proper application of mind for ulterior or *mala fide* purpose. Rather, it has been demonstrated by the answering opposite parties that the decision of the authority to locate the Grama Panchayat headquarter is based on relevant considerations those are germane to the issue and there has been no allegation of any *mala fide* or ulterior motive on the part of the authority.

In view of the above discussions, the Writ Appeal is dismissed, however, there shall be no order as to costs.

(Jaswant Singh)
Judge

(M.S.Sahoo)
Judge

November 29th 2022
Cuttack

Gs/dutta