

**Mahendra Pratap Singh**

**vs**

**State Of Orissa And Ors.**

Orissa High Court

29 July 1996

Citations: AIR 1997 Ori 37

Bench: S Chatterji, D Misra

## JUDGMENT

Dipak Misra, J.

1. The petitioner, an Ex-Sarpanch of Pachhikote Grama Panchayat on behalf of public of the aforesaid Grama Panchayat has approached this Court in the present writ application for issuance of appropriate writ commanding the opposite parties to take effective measures to run Primary Health Centre at Pachhikote within Korei block in the district of Jaipur by providing all amenities and facilities for proper running of the said health centre.

2, The facts, bereft of unnecessary details as unfolded are:--

On the basis of demands of the local people and public at large, the Government of Orissa in the Department of Health and Family Welfare decided to open certain primary health centres in different areas for the year 1991-92 subject to fulfilment of certain conditions. The aforesaid decision was communicated to the concerned authorities by letter No. 23501 dated 21-6-1991. In the said communication, the name of 'Pachhikote Gram Panchayat' in Korei Block found place. The conditions which are to be fitted up are as follows:--

"(i) The local people should provide minimum one acre of land duly pledged in favour of the Panchayat Samiti for the Medical Institution within a period of one month from the date of issue of this order.

(ii) The local people should provide permanent buildings for the medical institutions as well as for the staff within 6 (six) months from the date of issue of this order."

The aforesaid decision was intimated to the Sarpanch of 'Pachhikote' Gram Panchayat by the Block Development Officer, 'Korei' and on the basis of the aforesaid correspondence a meeting was conveyed at the level of the Grama Panchayat and a decision was taken to fulfil the conditions and a resolution was passed by the Grama Panchayat in the said premises. In pursuance of the said resolution, sale deed was executed by one Sri Gobinda Ch. Singh in favour of the State of Orissa on 3-9-1992 transferring one acre of land for the purpose of hospital. The sale deed was executed after obtaining due clearance from the Block Development Officer. In the meantime, the petitioner was elected as Sarpanch of the Grama Panchayat in question and there was correspondence between him and the Chief District Medical Officer and the Block Development Officer to carry out the scheme for opening of

the Primary Health Centre. The Block Development Officer by letter No. 3482 dated 22-9-1992 intimated the Chief District Medical Officer about the execution of the sale deed and requested him to provide plan and to take necessary action for opening of the primary health centre in 'Pachhikote' Grama Panchayat. The Chief District Medical Officer, opposite party No. 3 provided necessary plan for construction of the building for the health centre and the staff quarters and the construction commenced on the basis of the said plan. While building work was in continuance in order to avail the benefits of functioning of primary health centre at Pachhikote Grama Panchayat, by resolution dated 29-7-1993 the Grama Panchayat resolved to provide their well furnished newly constructed Grama Panchayat office building for the purpose of holding of Primary Health Centre till the completion of the new building. The Block Development Officer, Korei in his letter No. 1903 dated 31-7-1993 requested the competent authorities to depute required medical staff and the doctor for running of the Primary Health Centre at the Grama Panchayat office for the benefit of the public at large. On receipt of the letter from the Block Development Officer, the Chief District Medical Officer, Jaipur requested the Director of Health Services to move the Government for sanction of the posts for the aforesaid primary health centre and ultimately, posts were sanctioned by the Government and immediately one Doctor-Assistant Surgeon was posted at the P.H.C. Pachhikote. Thereafter on 5-1-95 order was passed posting one Pharmacist to Pachhikote. On 27-1-1995 one health worker and thereafter an attendant were appointed completing the entire requisite staff of the health centre. The grievance of the petitioner is that though the doctor, Pharmacist, health worker and attendant have been posted yet, the Primary Health Centre is not functioning and no steps have been taken to make the centre run and situation has ensured affecting public interest and causing public jeopardy. The further grievance is that the staff who were appointed in respect of Pachhikote P.M.C. have been working in Korei P.H.C. for the reasons best known to the authorities. But no positive steps have been taken for functioning of Pachhikote P.H.C. at the required place. With the aforesaid grievances, the petitioner has invoked the extraordinary jurisdiction of this Court for issuance of appropriate writ.

3. A return has been filed by the opposite parties wherein it has been indicated that though opening of Primary Health Centre was sanctioned at 'Pachhikote' yet the same could not start functioning due to the controversy between the rival groups and the filing of a writ application bearing O.J.C. No. 6237 of 1994. That apart, the conditions enumerated in the order of sanction have not been satisfied as one acre of land has not been pledged in favour of the Panchayat Samiti and the building at Pachhikote has not been completed for the medical institution and the staff quarters have not been constructed. Therefore, as further averred, the Doctor who was posted at Pachhikote P.H.C. has been permitted/allowed to work at P.H.C., Korei.

4-5. A rejoinder has been filed by the petitioner asserting that the stand taken by the opposite parties is absolutely incorrect. In O.J.C. No. 6237 of 1994 the Court had declined to interfere with regard to the complaint made by the petitioners therein in relation to location of the Primary Health Centre. It has also been highlighted in the rejoinder that they were very diligent in complying with the conditions enumerated in the order of sanction, and accordingly they transferred one acre of land in favour of the Government. This transfer should be treated as substantial compliance with condition no. (i). With regard to fulfilment of condition no. (ii), the stand in the rejoinder affidavit is that there was delay for construction of the health centre and the staff quarters not because of the fault of the Grama Panchayat, but because there was delay on the part of the competent authorities in providing the necessary plan. It has been categorically stated in the affidavit that a well furnished

Grama Panchayat building was made available for running the hospital and the same was accepted by the Director of Health Services, and accordingly, the staff were posted for 'Pachhikote' but for extraneous reasons, the said staff started functioning at Korei. It has also been pointed out in the rejoinder that permanent building has been completed but there is inaction on the part of the authorities, in taking effective steps to run the hospital. It is categorically stated that they are ready and willing to provide full co-operation and render all facilities for smooth functioning of the primary health centre.

6. We have heard Sri Pradipta Mohanty for the petitioner and Sri R.P. Mohapatra, learned Additional Standing Counsel for the State and its functionaries. Sri Mohanty has contended that the inaction of the agencies of the State is absolutely uncalled for and are unsupportable. He has urged with vehemence that efforts are being consistently made to deprive the people of 'Pachhikote' Grama Panchayat to have a Primary Health Centre at Pachhikote. The conditions stipulated in the order of sanction have been substantially complied with, yet the authorities on some pretext or other are not making endeavour to make the health centre function. Sri Mohanty further canvassed that in spite of the orders passed by the competent authorities of the department of Health and Family Welfare, because of changed scenario, the same have been given a go-bye and unsustainable technical pleas are being advanced to annihilate the previous sanction and arrangement.

7. The learned Additional Standing Counsel has submitted that there is no motive on the part of the authorities to deny the privilege and benefit to the Grama Panchayat of the petitioner. He has submitted that when the conditions are imposed, they are to be respected in letter and spirit and any deviation thereof is unacceptable, Advancing the cause of the State Government and justifying the silence and inaction on the part of the Governmental machinery, he has submitted that in absence of proper building for the health centre and staff quarters, it is not possible to run the centre at 'Pachhikote'. Sri Mohapatra has strenuously putforth the stand of the opposite parties to establish that in the prevailing circumstances the inaction of the Government is just, genuine and defensible.

8. Life is a glorious gift from God. It is the perfection of nature, a master-piece of creation. Human being is the epitome of the infinite prowess of the divine designer, Great achievements and accomplishments in life are possible if one is permitted to lead an acceptably healthy life. Health is life's grace and efforts are to be made to sustain the same. In a Country like ours, it may not be possible. to have sophisticated hospitals but definitely villagers of this Country within their limitations can aspire to have a Primary Health Centre. The Government is required to assist people, and its endeavour should be to see that the people get treatment and lead a healthy life. Healthy society is a collective gain and no Government should make any effort to smother it. Primary concern should be the primary health centre and technical fetters cannot be introduced as subterfuges to cause hindrances in the establishment of health centre. We have seen that the Grama Panchayat had transferred the land measuring one acre in favour of the Department of Health but still insistence is being made to pledge it in favour of the Panchayat Samiti. True it is, violation has occurred but the violation of this nature should not be utilised against the public at large. This should be regarded as substantial compliance of condition no. (i). With regard to condition no. (ii) we are surprised to note that in spite of permission being granted by the competent authorities to run the hospital in the building of the Grama Panchayat and the staff having been posted because of this provisional arrangement no positive efforts were made to make the health centre run at the appointed building but staff were diverted to Korei. Whatever might be the reasons ascribed by the authorities, we are constrained to hold that they are neither genuine

nor sanguine. It is not expected of a welfare State to play hide and seek with its citizens. The learned Additional Standing Counsel has asserted with vehemence that the building is complete. May, be some details are to be worked out. Details are details and are to be carried out with pragmatic objectivity and mutual cooperation. On our query, Sri P. Mohanty, submitted that the Grama Panchayat would be in a position to comply with the formalities in regard to condition No. (ii) within a period of six months. He has also suggested that if any aspect will remain wanting, the authorities of the Health Department, in all fairness, should point out the inadequacies and insufficiencies, so that they can rectify and comply. We appreciate the fair suggestion of Sri Mohanty.

9. Keeping in view the entire gamut of facts, considering the public orientated genesis, and on a conspectus of prevalent scenario, we direct that the Pachhikote Grama Panchayat should comply with the formalities relating to condition No. (ii) by end of Dec. 1996 and the Secretary, Health would depute a responsible officer to visit the building meant for hospital and give in writing his suggestions to the competent authorities of the Grama Panchayat for due compliance of the formalities. We expect the Secretary, Health to depute the officer bimonthly so that the authorities of the Grama Panchayat and the Health Department can work in mutuality. It needs no special emphasis to State that they are expected to work in harmony and reciprocity. We make it clear that if the condition No, (ii) is not fulfilled by the end of Dec. 1996, the Government will be at liberty not to establish the primary health centre at Pachhikote and can shift to any other place. It is admitted before us that the staff who were appointed to run the P.H.C. at 'Pachhikote' are working at Korei P.H.C. The Grama Panchayat was agreeable to offer the Grama Panchayat building for running of the health centre. If the building is still available, the same should be utilised for the purpose of running of the P.H.C., till the new building is completed. The Government should see either to divert the staff from Korei or make suitable arrangement for running of the P.H.C. in the building of Pachhikote Grama Panchayat. Necessary arrangement should be made within a period of three months from today.

10. With the aforesaid observations and directions, the writ application is disposed of. There shall be no order as to costs.

S. Chatterji, Actg. C.J.

11. I agree.