

HIGH COURT OF ORISSA: CUTTACK.

W.P. (C) No.21024 of 2016

In the matter of application under Article 226 and 227 of the
Constitution of India.

Bijuli Meher

..... Petitioner

- Versus-

State of Odisha and others

..... Opposite Parties

For Petitioner

:M/s. Sukanta Ku. Dalai, S.B.
Mahapatra, P.N. Swain.

For Opposite Parties

:Addl. Govt. Advocate (for State)
M/s. B.P.B. Mahali, H.P. Patra, M.
Mohanty. (intervenor)

PRESENT:

THE HONOURABLE SHRI JUSTICE SUJIT NARAYAN PRASAD

Date of hearing and judgment : 31.07.2018

S. N. Prasad, J.

In the instant writ petition the following prayers have been
made:-

- (i) The advertisement dated 3.11.2016 under Annexure-2
relates to Hanumanpalli-2 Anganwadi Center at Sl. No.3 be
quashed.

- (ii) The opposite party no.4 shall be directed to make fresh survey to identify Hanumanpalli-2 Anganwadi Center as per the Govt. guidelines.
- (iii) The opposite party no.1 shall be directed to frame a detailed and clear cut guideline to secure ends of justice.

2. Brief facts of the case of the petitioner is that the Central Government has floated a Scheme known as Integrated Child Development Service (ICDS) Programme in the year 1975, funded by the Central Government, its applications have been vested at the hand of respective States. Anganwadi Workers are appointed from the local inhabitants. Accordingly, the State Government has made guideline for appointment of the workers on 8.6.1992 and for Helpers guideline dated 24.11.1997, modified guideline in the year 1998 and then 2.5.2007.

For appointment of Anganwadi Workers, the State Government has not framed any guideline specifically for carving out of the Anganwadi center area and due to that reason the State authorities are adopting certain procedures, which are as follows:-

1. Govt. fixes number of Anganwadi center to each Block.
2. Proposal sent to Dist. Social Welfare officer.

3. CDPO makes survey-considers on the basis of Natural barriers/ST/SC Community/population distance etc.
4. Proposal basing on survey sent to Block Level Committee.
5. B.L.C.C. approves it where sub-collector chairman, M.P., MLA Chairman Panchayat Samiti, BDO, Medical Officer etc. and CDPO as Member Secretary.
6. Publication of center.

The P.R.I. members along with the District Administration and the CDPO of the respective area have been authorized to coordinate and to identify the Anganwadi Areas.

According to the petitioner, the cause of action arose which led her to file petition is that she being intending applicant for the post of Anganwadi Worker in newly identified Anganwadi center namely Hanumanpalli-2 Anganwadi center in her village. For selection and engagement of Anganwadi Worker for the aforesaid center an advertisement has been published in respect of different villages and at Sl.No.3, applications have been invited for Hanumanpalli-2 center under Hilung Gram Panchayat and the Anganwadi area has been pointed out from Mohan Meher's residence to Dhanu Meher residence and the villages has been pointed out as Badapada and Raghunath pada. The

petitioner resides in Badapada which is a hamlet village of Hanumanpalli under the Hilung Gram Panchayat and the other village shown in the advertisement as Raghunathpada which is a hamlet village of Ufula Gram Panchayat. In the advertisement though the Anganwadi area has been shown as Hanumanpalli village, but partly from Badapada and village of Raghunath pada of another Gram Panchayat has been clubbed with and due to stipulation of the villages which starts from Mohan Meher hiousse to Dhanu Meher house, the petitioner has been deprived from participating in the selection process as she is residing in just adjacent to the aforesaid houses.

The petitioner contends that in carving out the center area, the pick and choose policy has been adopted only in order to deprive her to participate in the selection process, as such she has filed this writ petition for seeking a direction upon the opposite parties to quash the advertisement dated 3.11.2016, to make fresh survey to identify Hanumanpalli-2 Anganwadi center and direct opposite party no.1 to frame detailed and clear cut guidelines to secure ends of justice.

Opposite parties 2 to 4 have filed affidavit duly been sworn by the CDPO, Birmaharajpur, wherein it has been stated that the process for bifurcation of one village into two numbers of Anganwadi centers are decided by seeking the geographical status of the village.

Since inception i.e. 2008, the village Hanumanpalli is constituted into five padas i.e. Malipada, Bhagabatmandirtapada, Satgharia pada, Badpada and Raghunathpada.

In view of the population criteria three numbers of padas i.e. Malipada, Badpada and Raghunathpada survey population is 450 total numbers of five padas are under Hanumanpalli village since its inception all pre-school children and school children were receiving educational facilities from Hanumanpalli village. As per the revised guideline which come into force from 2.5.2007 all Anganwadi centers were formed, basing on the population criteria and geographical status of the village.

The area located for formation of additional Anganwadi center was finalized at the village by the CDPO, Supervisor, Anganwadi Worker and the community. The authorities, after taking into consideration the population of the aforesaid area, has carved out the area for the center by bifurcating the original Anganwadi center by two parts i.e. Anganwadi center-1 and Anganwadi center-2. Hanumanpalli Anganwadi Center has been functioning since 14.01.2008 including AWC-1, Badapada and Raghunathpada. The candidates Bijuli Meher's house comes under Anganwadi center-1 vide Sl. No.36.

Raghunathpada although is coming under Uffula Grama Panchayat but the same is located in Hanumanpalli village and the same is not being a hamlet village and includes in the village Hanumanpalli. All the beneficiaries of Badapada and Raghunathpada are receiving service from Hanumanpalli AWC. Raghunathpada is only a pada which coincides in Hanumanpalli village.

Further contention is that the population of AWC-1 is 406, where the petitioner resides and the population of Badapada and Raghunathpada is 450 as per the survey made, hence it is decided to be given in the name of AWC-2.

Thus, it has been stated that is basing upon the population, since area has been carved out and this is strictly on the basis of the decision taken by virtue of the policy decision taken by the competent authority to carve out a Anganwadi center on the basis of the population depending upon its distance with the AWC and if on the basis of population the center is being created taking the location of the Anganwadi center and on the basis of that house are being numbered and the area is carved out, as such the authorities are obeying the policy decision in carving out the center area, hence there is no infirmity in the same.

The petitioner since has not come under the location of the center area rather she is coming under AWC-1 area as per the location of her house and distance of the AWC, hence it is not a case that the case of the petitioner cannot be considered for her candidature as Anganwadi Worker for any center rather she wants to be considered for AWC-2 but since in the survey basing upon the population, her house is not coming under the area of AWC-2, she has approached this Court by way of this instant writ petition, hence the same may not be entertained.

Opposite party no.5 has appeared through his counsel namely B.P.B. Mahali who has submitted that the petitioner has got no locus to assail the aforesaid advertisement since the aforesaid advertisement is only meant for one Anganwadi Center and due to increase in the population a mini Anganwadi center was created known as Hanumanpalli AWC-2.

He submits by putting reliance upon the judgment rendered by the Hon'ble Supreme Court in the case of **People's Union for Civil Liberties vrs. Union of India and others**, wherein discussion for a guideline for carving out the center area has been made which is strictly based upon the criteria of population which the State Government is following as would be evident from the documents annexed to the writ

petition under Annexure-2, which is a policy decision issued under the signature of Commissioner-cum-Secretary, Women and Child Development Department addressed to all the Collectors and from its perusal, it is evident that center area is to be carved out mainly on the basis of population and it is on the basis of population a survey was conducted as would be evident from Annexure-A/5 annexed to affidavit, basing upon the size of population, area has been carved out on the basis of house by counting members of family residing in a particular house, as such it is incorrect to say that there is no policy decision.

He submits that the contention raised by the petitioner that the State Government is functioning on the basis of the compilation of the guideline prepared by the Advocate of the High Court which is incorrect, in view of the fact that there is policy decision for carving out the area of the center basing upon the size of population which is in consonance with the observation made by the Hon'ble Supreme Court in the case of **People's Union for Civil Liberties** (supra).

He further submits that the petitioner is not an applicant of AWC-2 but even then she has filed this writ petition and by virtue of an interim order dated 5.12.2016 passed by this Court, the entire selection process is at hold, even if she can be said to be an applicant for AWC-1, where she originally resides.

In view of such submissions, it has been submitted that the writ petition may be dismissed.

Heard the learned counsel for the parties and on appreciation of their rival submissions, admitted position in this case is that in Hanumanpalli there was only one AWC. It is not in dispute that the AWC is being established under the Central Government Scheme to implement ICDS Project under the monitoring of the respective State Government across the country. Under the aforesaid Scheme, AWC is to be created and to run it smoothly Anganwadi Worker and Anganwadi Helper are to be engaged from amongst the people residing in the area specifically women category of the citizen. The main mission of creating AWC to extend the benefit to the pre-School children and females. Respective State Government has taken decision for successful completion of the aforesaid mission, to create AWC and engage Anganwadi Worker/Helper from amongst local people specifically women.

The paramount consideration for creating of AWC is based upon the population, so that the best be extended in favour of the local people.

The matter related to creation of AWC also fell for consideration in the case of **People's Union for Civil Liberties** (supra) and their Lordship has been pleased to issue a guideline for creation of AWC on the population basis.

It is evident from the documents annexed as Annexure-2 i.e. guideline dated 2.5.2007 issued by the Commissioner-cum-Secretary, Women and Child Development Department is in terms of the order passed by the Hon'ble Supreme Court in the aforesaid case directing all the Collectors to create AWC on the basis of population as per the Table reflected herein below:-

Earlier Revised Criteria	New Revised Criteria received from Govt. of India on 1.4.2007
<u>For Rural Projects Population</u> 500 to 1500 – 1 AWC 150 to 500 – 1 mini AWC	<u>For Rural and Urban Projects Population</u> 400 to 800 – 1 AWC 800 to 1600 – 2 AWCs 1600 to 2400 – 3 AWCs Thereafter in Multiples of 800 – 1 AWC
<u>For Tribal Projects population</u> 300 to 1500 – 1 AWC 150 to 300 – 1 Mini AWC	<u>For Mini AWC Population</u> 150 to 400 – 1 AWC
<u>For Urban Projects population</u> 500 to 1500 – 1 AWC	<u>For Tribal/Riverine/Desert, Hilly & other difficult areas/ projects population</u> 300 to 800 – 1 AWC

Thus, it is evident that the State Government through Women and Child Development Department, in compliance of the order

passed by the Hon'ble Supreme Court has asked the respective Collectors to create AWC on the basis of population.

It is also evident from the counter affidavit filed by the opposite parties that the AWC is being created on the basis of the population of the respective area.

Earlier, in Hanumanpalli village, there was only one center but due to increase in the population, authorities have taken decision to create another Mini AWC which have been named as AWC-1 and AWC-2.

Admittedly, the petitioner is a resident of Hanumanpalli village but after creation of Mini AWC, her house has not come within the zone of AWC-2. The advertisement was published inviting applications from the intending candidates for the post of Anganwadi Worker of AWC-2, selection process commenced, applications received, the petitioner is residing in the center area of the AWC-1 but wants to participate for AWC-2 and has approached this Court challenging the creation and carving out of the area of AWC-2 on the ground that without any guideline in this regard center area has been created, hence the advertisement has been sought to be quashed with a further direction to issue fresh advertisement.

It is undisputed that Women and Child Development Department has issued communication to all the Collectors basing upon the decision of the Hon'ble Supreme Court in the case of **People's Union for Civil Liberties** (supra) regarding carving out the center area strictly on the basis of population wise.

Now, only concern of the petitioner that pick and choose policy has been adopted by the competent authority in carving out the center area.

After going through the entire pleading, it has nowhere stated that how it has followed pick and choose policy. But when the Government has come out with the specific plea in the counter affidavit at para-3, that the petitioner herself has relied upon the guideline dated 2.5.2007, then what more requires that has not been averred in the writ petition.

However, learned counsel for the petitioner submits that creation of the center area on the basis of house is also on the basis of pick and choose policy, but he could not be able to satisfy the Court how it is pick and choose policy.

This Court, after going across the order passed by the Hon'ble Supreme Court in the case of **People's Union for Civil**

Liberties (supra) and the guideline dated 2.5.2007 and survey report as contained under Annexure-A/5, counter filed by the opposite party nos.2 to 4 and 5, has found that the center area has been created on the basis of population. If the center area is being created on the basis of population, the number of household remain immaterial, it is for the reason that the center area is to be created for number of house. For example if a center is to be created for 500 people, in that situation wherever 500 people end as per the number of houses, the periphery of center will be up to that house, meaning thereby number of houses is not the criteria to create center, rather the size of population.

As per the plea taken by the opposite party-State in the counter affidavit that it is on the basis of the house depending upon the size of population and people living in the houses, the center has been created which also finds support from the survey report as has been annexed as Annexure-A/5 to the counter affidavit filed on behalf of opposite party no.5.

Contention of the petitioner that in choosing the houses, the authorities have adopted pick and choose policy but save and except this the petitioner has not stated and brought on record that how it is pick and choose method rather as has already been stated and at the nick of repetition, it is again been stated here that Annexure-A/5 to

counter affidavit filed by O.P. No.5, the basis of creation of center area is population and not the houses.

It is also not the case of the petitioner that she being deprived from consideration of her candidature for any center rather learned counsel for the petitioner himself has admitted the fact that the petitioner is residing in the Hanumanpalli AWC-1 having her permanent house and as such on this ground it cannot be said that the petitioner is having no opportunity for consideration of her candidature.

In view of the aforesaid facts and circumstances, in my considered view there is no infirmity in the creation of center area for Hanumanpalli AWC-2 as per the detail discussion made hereinabove.

In view thereof, I find no reason to extend relief to the petitioner as has been prayed in the instant writ petition.

Accordingly, the writ petition is dismissed being devoid of merits.

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S.N. Prasad, J.