

(2006) 01 OHC CK 0037
In the Orissa High Court
Case No : W.A. No. 106 of 2005

Alekha Chandra Rout and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 30-01-2006

Acts Referred:

Citation : (2006) 1 OLR 370

Hon'ble Judges : S.B. Roy, C.J; M.M. Das, J

Bench : Division Bench

Advocate : Mahendra Kumar Das, S. Mallik, L.D. Dash, Barija Das and Minarani Das, for the Appellant; D.C. Mohanty, State Counsel, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Mr. Mahendra Kumar Das, learned Counsel for the appellants and Mr. D. C. Mohanty, learned Government Advocate.
2. In spite of the notice being served on the private respondent No. 5, none appears on his behalf.
3. In this appeal under letters patent, the appellants seek to challenge the order dated 5.12.2005 passed by the learned Single Judge in W.P.(C) No. 14768 of 2005 by which the writ petition was dismissed.
4. The case of the appellants is that they are functioning as Sub-Wholesaler being duly licensed at different places of Rajnagar Block in the district of Kendrapara as described in paragraph-3 of the memorandum of appeal. It is pleaded by the appellants that their licences are deemed to be valid till 31.3.2006. They allege that the Collector of the district in violation of the guidelines annexed to the memorandum of appeal as Annexure-4 appointed the respondent No. 5 as a Sub-Wholesaler for distribution of kerosene for Chandi Baunsmul which is situated at a distance of only 7 Kms. from the place of business of the appellant Nos. 1 and 3. The further case of the appellants is that according to the guidelines, appointment of three Sub-Wholesalers in the block in

question is justified. But considering the geographical barrier existing in the area within the block, four such Sub-Wholesalers are functioning in Rajnagar Block since long without any complaint and the Collector without causing any inspection and enquiry and without recommendation of the Block Development Officer has illegally appointed the respondent No. 5 as a Sub-Wholesaler for the aforesaid area. The appellants challenged the said action of the Collector in appointing the respondent No. 5 as a new Sub-Wholesaler for kerosene thereby encroaching upon the areas of operation of the appellants, in W.P.(C) No. 14768 of 2005 before this Court praying to quash the said impugned order of appointment issued in favour of the respondent No. 5. The learned Single Judge by his order dated 5.12.2005 has dismissed the writ petition. Aggrieved, the appellants have filed this letters patent appeal for appropriate relief. Mr. Das, learned Counsel for the appellants submitted that the learned Single Judge has committed an error by treating the place of business at Chandi Baunsmul as an existing vacant place though the said area comes within the area of operation of the appellant No. 1 and is situated at a distance of only 7 Kms. from his place of business. He places reliance on Clause (5) of the guidelines of the Government and contends that whenever an appointment is proposed to be given to an additional Sub-Wholesaler on the ground of geographical barrier, the place of business of such additional Sub-Wholesaler should be so located that the geographical barrier ceases to exist and appointment of the respondent No. 5 does not satisfy the said clause of the guidelines. According to him this contention has not been considered by the learned Single Judge. He further submits that such appointment of new additional Sub-Wholesaler will adversely affect the interest of the appellants, and, therefore, before such appointment was made, the appellants were entitled to an opportunity of hearing.

5. We have perused the guidelines annexed to the memorandum of appeal as Annexure-4. The relevant clauses are 3, 4 and 5, which are quoted hereunder:

GUIDELINES FOR APPOINTMENT OF KEROSENE SUB-WHOLESALEERS AND RETAILERS. I. APPOINTMENT OF SUB WHOLESALEERS. XX XX XX

3. Normally, there shall not be more than one sub-wholesaler for a population of 50,000 persons in a block or urban local body. However, more sub whole sellers can be appointed if there is geographical barrier.

4. Geographical barrier shall mean the followings:

(i) There existing a river/stream/nallah etc. without a bridge within reasonable distance between the retail out let and sub-wholesaler's place of business.

(ii) Road distance between the retail out let and sub-wholesaler is more than 15 Kms by the shortest route.

(iii) Inaccessible and difficult terrain like hilly area etc.

5. Wherever an appointment is proposed to be given to an additional sub-wholesaler on the grounds of geographical barrier, the place of business of

additional sub-wholesaler should be so located that the geographical barrier ceases to exist in respect of the retail points tagged to the additional sub-wholesaler.

5. Mr. D.C. Mohanty, learned Government Advocate, however, submits that in the Rajnagar/ block there are various geographical barriers, such as, rivers etc. He further submits that the Clauses (3) to (5) of the guidelines cannot be construed to be mandatory and, moreover, Clause (3) provides that normally the guidelines prescribed in the said clause are to be followed. But it also provides that more sub-wholesalers can be appointed if there is geographical barrier. According to the learned Government Advocate, considering the requirements and need of the local people and the geographical situation, respondent No. 5 was rightly appointed as an additional sub-wholesaler for distribution of Kerosene. The main intention of the guidelines is to see that people in the locality are benefited and proper distribution of Kerosene which is an essential commodity is made so as to reach the Ultimate consumer.

6. We have carefully gone through the impugned order of the learned Single Judge dated 5.12.2005 passed in W.P.(G) No. 14768 of 2005. Though we find that the contentions raised by the appellants were not elaborately discussed in the said order but the conclusion arrived at by the learned Single Judge that the appointment of respondent No. 5 should not be cancelled, is justified. We are, therefore, unable to find any reason to interfere with the order impugned in this appeal.

7. The writ appeal is accordingly dismissed.

8. Urgent certified copy of this order be granted on proper application.