
(2015) 12 OHC CK 0041
In the Orissa High Court
Case No : W.P. (C) No. 22411 of 2012

Arunabala Sethi

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 09-12-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (2015) 12 OHC CK 0041

Hon'ble Judges : S.N. Prasad, J.

Bench : Single Bench

Advocate : Nagen Kumar Barick, T.K. Mohanty and A.R. Mishra, Advocates, for the Appellant; Amit Pattnaik, Addl. Government Advocate, for the Respondent

Judgement

S.N. Prasad, J.—Heard learned counsel for the petitioner, Mr. Amit Pattnaik, Addl. Government Advocate for O.Ps.1 to 3 and M/s. S.D. Das, learned Sr. Advocate for opposite party No.

2. The order dated 4.9.2012 passed in Anganwadi Appeal No. 10 of 2012 by the Additional District Magistrate, Nayagarh is under challenge in this writ petition.

3. Brief facts of the case is that the petitioner has been awarded 57.2 marks by the selection committee wherein opposite party No. 4 has been awarded 53.93 marks but 5 additional marks on account of having disability of hearing impairment has been added, hence she stood first in the complete merit list and selected.

4. According to the petitioner additional 5 marks awarded to the opposite party No. 4 on account of having disability of hearing impairment should not have been awarded because of the reason that opposite party No. 4 has adopted unfair practice since he has got three medical certificates of different dates and the certificate basing upon which 5 extra marks was awarded which was dtd. 1.5.2009 has been found to be null and void by the issuing authority vide his report dtd. 8.11.2010 and as such opposite party No. 4 was not eligible to be

selected over and above the petitioner.

5. The petitioner when not selected, has raised this issue before the Sub-Collector in Misc. Appeal No. 27 of 2012 and the Sub-Collector vide order dtd. 17.8.2010 has asked for a report from the Chief District Medical Officer, Nayagarh to verify genuineness of the certificate dtd. 1.5.2009 and submit report in this regard by 30th August, 2010.

6. The grievance of the petitioner is that the Sub-Collector without waiting for the report of the Chief District Medical Officer, Nayagarh has confirmed the selection of opposite party No. 4.

7. The petitioner being aggrieved has come to this Court vide W.P.(C) No. 10827 of 2011 but the same was dismissed for default vide order dated 3.2.2012.

8. The petitioner again filed fresh writ petition being W.P.(C) No. 5401 of 2012 which was disposed of vide order dated 10.4.2012 giving liberty to the petitioner to approach before the Additional District Magistrate and the Additional District Magistrate was directed to take decision in this regard.

9. In pursuance to the order passed by this Court in WPC No. 5401 of 2012 Additional District Magistrate has passed order but refused to entertain the contention of the petitioner.

10. Further case of the petitioner is that after the order having been passed by the Sub-Collector, the Chief District Medical Officer, Nayagarh has submitted a report on 8.11.2010 and asked the authorities to treat the certificate dtd. 1.5.2009 to be null and void since the signature of the Medical Officer is not genuine and it is tampered. The percentage which has been written is not in the handwriting of the issuing authority. It has been contended that if the Sub-Collector would have waited for the report, O.P. No. 4 would not have been found to be a proper selectee.

11. It has further been contended that once the Sub-Collector has passed order on 17.8.2010 asking report from the issuing authority and the medical certificate it was the duty of the Sub-Collector to wait for the same but he without waiting for the report and placing reliance upon earlier authentication dtd. 6.1.2010 has passed the order which is not proper.

12. On the other hand, opposite party-State has defended the order and contested the case of the petitioner by filing detail counter affidavit, placing reliance upon various paragraphs of the counter affidavit. It has been submitted that opposite party No. 4 is found to be first in the merit list since she has secured higher marks than the petitioner. But however, it has been admitted in the counter affidavit that in pursuance to the direction passed by the Sub-Collector, Nayagarh vide order dtd. 17.8.2010 in Misc. Appeal No. 27 of 2010 the report was submitted after disposal of the said appeal and the medical certificate dtd. 1.5.2009 submitted by opposite party No. 4 was held to be illegal and the authorities have been directed to treat the said certificate as null and void.

13. Opposite party No. 4 has been represented by senior counsel Mr. S.D. Das who has vehemently argued the case by submitting that this writ petition is not maintainable for the reasons that the petitioner has approached this court not with clean hands and with material suppression of facts because the petitioner has filed one writ petition being W.P.(C) No. 10287 of 2011 which was dismissed for default, moreover in the said writ petition the order passed by the Sub-Collector was not under challenge.

14. The petitioner has again filed a fresh writ petition being W.P.(C) No. 5401 of 2012 but no reference of W.P.(C) No. 10287 of 2011 has been given which is contrary to the provision of rules of the High Court of Orissa which requires a litigant to furnish all details about the earlier petitions or pending petitions.

15. It has been submitted that even the petitioner has not apprise the Additional District magistrate regarding the first writ petition being W.P.(C) No. 10827 of 2011 and if this court would have been apprised regarding dismissal of W.P.(C) No. 10827 of 2011 then the order passed in W.P.(C) No. 5401 of 2011 could not have been passed.

In this regard, learned senior counsel has relied upon judgments of the Hon''ble Supreme court in the case of K.D. Sharma Vs. Steel Authority of India Ltd. and Others, ; Meghmala and Others Vs. G. Narasimha Reddy and Others, , Dalip Singh Vs. State of U.P. and Others, and Kishore Samrite Vs. State of U.P. and Others, .

By referring to these judgments of the Hon''ble Supreme Court it has been submitted by learned senior counsel appearing for opposite party No. 4 that settled proposition is that if a person has approached with material suppression of facts the writ petition is not fit to be entertained and it has to be dismissed.

16. So far as merit of the case is concerned, learned senior counsel appearing for the opposite party No. 4 has argued that there is no forgery on the part of the opposite party No. 4 and she has been selected on the basis of the disability certificate which has been found to be genuine and to substantiate his argument he has referred to the verification report of C.D.M.O., Nayagarh dated 6.1.2010 annexed as Annexure-A to the counter affidavit filed by the State.

17. By reverting the statement of the learned senior counsel for the opposite party No. 4 learned counsel for the petitioner has submitted that so far as dismissal of the first writ petition being W.P.(C) No. 10827 of 2011 since same was dismissed in default hence principle of res judicata will not be applicable. In this regard, reliance has been placed by referring the judgment dated 11.12.2015 rendered by the Hon''ble Supreme court in the case of Krishna Hare Gaur v. Vinod Kumar Tyagi & others passed in Civil Appeal No. 1755 of 2015.

18. It has been submitted that for the fault committed by the Advocate litigant may not be made to suffer and in this regard reliance has been placed to the judgment dated 2.2.2006 rendered by the Hon''ble Supreme Court in the case of

Ram Saran v. I.G. of Police, CRPF and others passed in Appeal (Civil) No. 3044 of 2003.

19. Heard learned counsel for the parties and perused the documents on record. After considering the rival submissions of the parties four questions fell for consideration before this court:

"(i) Whether the instant writ petition is maintainable?

(ii) Whether the order passed by the Sub-Collector can be said to be justified?

(iii) Whether the opposite party No. 4 can be allowed to continue in service?

(iv) Whether the petitioner is entitled for any relief?"

ISSUE NO.1

20. Learned Sr. Counsel appearing for opposite party No. 4 has argued that this writ petition is not maintainable because there is material suppression of fact and it is settled that if the litigant is not approaching the court of law with clean hand then such type of litigant is not entitled to be given any relief. In this regard he has placed reliance upon various judgments as referred hereinabove.

21. After going through the judgments rendered by Hon"ble Supreme Court of India as relied upon by learned Sr. counsel appearing for opposite party No. 4 it is laid down therein that in case of any suppression of material facts writ petition cannot be entertained because the litigant who is approaching under Article 226 of the Constitution of India for equitable relief under the discretionary power of the high Court the discretion cannot be used if the litigant is not fair to the court.

22. Thus, the important thing which is to be seen in this case is what is suppression of material fact. This has been dealt with by Hon"ble Supreme Court of India in the case of S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others, wherein it has been held that the suppression of fact must be material one since had it not been suppressed, it would have been had effect on the merit of the case. It must be a matter which was material for consideration of the court, whatever view the court may have taken. Paragraph 13 of the judgment is quoted herein below for ready reference:--

"13. As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. it must be a matter which was material for the consideration of the court, whatever view the court may have taken. Thus when the liability to income tax was questioned by an applicant on the ground of her non-residence, the fact that she had purchased and was maintaining a house in the country was held to be a material fact, the suppression of which disentitled her to the relief claimed. Again when in earlier proceedings before this Court, the appellant had undertaken that it would not

carry on the manufacture of liquor at its distillery and the proceedings before this Court were concluded on that basis, a subsequent writ petition for renewal of the licence to manufacture liquor at the same distillery before the High Court was held to have been initiated for oblique and ulterior purposes and the interim order passed by the High Court in such subsequent application was set aside by this Court. Similarly, a challenge to an order fixing the price was rejected because the petitioners had suppressed the fact that an agreement had been entered into between the petitioners and the Government relating to the fixation of price and that the impugned order had been replaced by another order."

23. In another judgment which was rendered by Hon"ble Supreme Court in case of Arunima Baruah Vs. Union of India (UOI) and Others, material fact has been defined. It has been held by their Lordship at paragraph 12 which is quoted herein below:

"12. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands became clean, whether the relief would still be denied is the question."

Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. A person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands became clean, whether the relief would still be denied is the question. And while answering this their Lordship after discussing the judgment rendered in S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others, wherein the petitioner even on availability of alternative remedy prosecuted a proceeding under Article 226 for the same relief. Hon"ble Supreme Court has held that when a party has moved High Court under Article 226 and failed to obtain relief and then moved an application under Article 32 before this Court for the same relief, normally the court will not entertain the application under Article 32 but wherein appellate jurisdiction the order is not a speaking one or the matter has been disposed of on some other ground, this court, as, in a suitable case, entertain the application under Article 32 and as such it has been held that the fact a suit had already been filed by the appellant was not such a

fact the suppression of such could have affected the final disposal of the writ petition on merit. Taking into consideration the judgment passed by Hon''ble Supreme Court in the case of S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others, their Lordship in the case of Arunima Baruah Vs. Union of India (UOI) and Others, have been pleased to hold at paragraph 22 that suppression of filing of suit is no longer is a material fact.

24. In another judgment rendered by Hon''ble Supreme Court in the case of Prestige Lights Ltd. Vs. State Bank of India, their Lordship have held that the writ petition cannot be entertained in case of suppression of material facts.

Even in the judgment relied upon by learned Sr. Counsel in case of K.D. Sharma v. Steel Authority of India Ltd. and others (supra) it has been held that in case of non-disclosure of all material fact the litigant is not entitled for any equitable relief likewise in the judgment rendered by Hon''ble Supreme Court in Dalip Singh's case (supra). The suppression of material facts is to be seen while refusing the discretionary power under Article 226 of Constitution of India.

25. Thus there is no dispute about the fact that the litigant who is approaching the jurisdiction conferred under Article 226 of the Constitution of India to High Court is supposed to come out with a clean hand and without suppression of material facts and the material facts has been defined which mean material for the purpose of determination of the issue. In the light of these judgments now the fact of the case is to be examined regarding suppression of facts which can be said to be material suppression important for determining the issue.

26. There is no dispute that the petitioner has challenged the engagement of opposite party No. 4 on the ground that she is more meritorious than her and the additional 5 marks which was allotted to opposite party No. 4 should not have been allotted since the medical certificate of hearing impairment dtd.1.5.2009 was doubtful for the reason that opposite party No. 4 has got three medical certificates during short span of time and when these facts have been brought to the notice of Sub- Collector, Sub-Collector in order to verify this issue has passed an order on 17.8.2010 calling for a report from the issuing authority, i.e. Chief District Medical Officer, Nayagarh to assess the veracity of the certificate dtd. 1.5.2009. It is also not disputed that the Sub-Collector in absence of the said report has passed the order confirming the selection of opposite party No. 4.

27. Thus, the main issue raised by the petitioner regarding engagement of opposite party No. 4 on the basis of false and in genuine certificate has remained unanswered.

28. It is also not disputed that when the Sub-Collector has passed an order the Chief District Medical Officer has submitted a report on 18.11.2010 and specifically pointed out that the disability certificate dtd. 1.5.2009 is not genuine, signature has been tampered and the issuing authority has not put his signature hence the document has been said to be forged one and therefore the authorities have been requested to treat this certificate as null and void.

Thus opposite party No. 4 is continuing in service on the basis of 5 additional marks which was awarded to him on the basis of certificate dtd. 1.5.2009 which is found to be forged and requested to treat as null and void. This has also not been answered by the Sub-Collector. The petitioner although has approached this court vide W.P.(C) No. 10827 of 2011 but the same was dismissed for default.

29. The petitioner again filed a fresh writ petition being W.P.(C) No. 5401 of 2011 and the order has been passed in the said writ petition giving liberty to the petitioner to prefer an appeal before the Additional District Magistrate, Nayagarh ventilating his grievance and in terms the Additional District Magistrate was directed to pass an order within reasonable period.

Thus, in W.P.(C) No. 5410 of 2011 also no order on merit of the claim of the petitioner has been passed. In this juncture it is relevant to consider the argument advanced on behalf of learned Sr. Counsel appearing for opposite party No. 4 that is the petitioner has not mentioned about the out come of W.P.(C) No. 10827 of 2011 in W.P.(C) No. 5410 of 2011 hence according to learned Sr. Counsel it is material suppression of facts.

This submission cannot be accepted for the reason that the material suppression has been defined by Hon"ble Supreme Court as indicated hereinabove will be said to be a factor which is important for determination of the issue. If the facts suppressed is not material for determination of the lease between the parties, the court cannot refuse to exercise its discretionary jurisdiction. A person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. Even if the said dirt is removed and the hands become clear whether the relief would be still denied is questioned and it has been clarified that if the facts suppressed has got no bearing with the main issue raised by the litigant, it cannot be said to be material suppression of fact.

30. In W.P.(C) No. 10827 of 2011 no order on merit was passed rather it was dismissed in default. The petitioner has filed a fresh writ being W.P.(C) No. 5401 of 2011 without referring about W.P.(C) No. 10827 of 2011 hence it cannot be said to be material suppression of facts because no order was passed on merit in W.P.(C) No. 10827 of 2011 rather it was dismissed in default. The matter would have been different if any order would have been passed in W.P.(C) No. 10827 of 2011 touching the merit of the issue involved which is the allegation of forged medical certificate having been used by opposite party No. 4. But this issue has neither been answered in W.P.(C) No. 10827 of 2011 or in W.P.(C) No. 5410 of 2011.

As such this suppression cannot be said to be material suppression of fact.

31. More over the Sub-Collector has passed an order in Anganwadi Appeal No. 10 of 2010 on 4.9.2012 wherein also the petitioner has raised a specific issue regarding veracity of the physically handicapped certificate dtd. 1.5.2009 which has been observed by the Addl. District Magistrate in paragraph 3(b). The further reference has been made in the order that the Chief District Medical Officer has

tested the veracity of the disability certificate which has also been quoted in the order in paragraph 3(c) but very surprisingly no finding has been given in this regard and by making reference to the fact that the petitioner has raised this issue before the Sub-Collector and since the matter has already been decided by Sub-Collector in order dtd. 12.11.2010, hence the same has been said to be barred by principle of res judicata and rejected the appeal.

32. Thus it is further apparent from the order passed by the Addl. District Magistrate that even he has not answered the issue regarding veracity of the disability certificate and gone into the applicability of the principle of res judicata. Thus the issue which has been raised by the petitioner has remained unanswered and as such the third writ petition has been filed which is the instant writ petition. Although in this writ petition reference of both the writ petitions, i.e. W.P. (C) No. 10827 of 2011 and W.P.(C) No. 5401 of 2012 has been given.

33. In the light of the judgments rendered by Hon''ble Supreme Court of India as indicated hereinabove which is equally applicable to the facts and circumstances of the case and applying the said ratio it is held that the writ petition cannot be dismissed and it is maintainable because even if the part of the fault committed by the petitioner by not referring regarding earlier writ petitions will be ignored, it is not going to affect the merit of the claim of the petitioner because the main issue has not been answered by the authority. Hence issue No. 1 is answered in favour of the petitioner.

ISSUE NO.2 & 3

34. Since issue Nos. 2 & 3 are inter-connected to each other, hence both are being answered.

The petitioner as well as opposite party No. 4 had participated in the selection process. Petitioner claims to be secured 57.2 marks while opposite party No. 4 claims to be secured 53.93 marks but the opposite party No. 4 has been declared first since she had produced disability certificate regarding hearing impairment and for that reason extra 5 marks was awarded to her and thereby she has got 58.93 marks hence stood first in the final merit list and selected.

35. It is the specific case of the petitioner that opposite party No. 4 has got three medical certificates. First is of date 1.1.2008 (Annexure-3(A)) wherein the extent of disability is shown as 45%, second medical certificate is of date 1.5.2009 (Annexure-2(B)) wherein the extent of disability is shown as 75% and the third one is of date 2.9.2009 showing disability to the extent of 75%. The petitioner has casted doubt upon the conduct of opposite party No. 4 regarding different disability certificate on the ground that in first disability certificate issued on 1.1.2008 the extent of disability was 45% and in the second disability certificate which was issued on 1.5.2009 the extent of disability was 75% and subsequently after lapse of only four months a new certificate has been issued showing disability to the extent of 75%.

Opposite party No. 4 had produced the certificate dtd. 1.5.2009 and got 5 additional marks. On this situation the petitioner has raised objection regarding genuineness of the certificate and Sub-Collector while entertaining the appeal being Misc. Appeal No. 27 of 2010 has passed an order on 17.08.2010 asking the Chief District Medical Officer, Nayagarh to verify the genuineness of the certificate produced by the appellant and to report by 30th August, 2010.

Thereafter the case was adjourned for different dates but report has not come. But the Sub-Collector without waiting for the report has passed the final order on 12.11.2010, placing reliance upon the authentication certificate given by the Chief District Medical Officer as contained in letter No. 78 dtd. 6.1.2010 has found the engagement of opposite party No. 4 as genuine and dismissed the appeal. Then the petitioner has moved before this court and the second writ petition being W.P.(C) No. 5401 of 2011, this court has given liberty to the petitioner to approach before the appellate authority, i.e. the Addl. District Magistrate and the Addl. District Magistrate has registered the appeal being Anganwadi Appeal No. 10 of 2012 but dismissed the same vide order dtd. 4.9.2012 on the ground that the Sub-Collector has passed an order and as such the issue has been held to be barred by principle of res judicata and thus dismissed the appeal which is under challenge in this writ petition.

36. From perusal of the document dtd. 18.11.2010 (Annexure-2) issued by the Chief District Medical Officer, Nayagarh, addressed to the Sub-Collector regarding enquiry of genuineness of the certificate in respect of Annapurna Pradhan by making reference to letter No. 947 dtd. 28.8.2010. It has been reported therein that;

"The physically handicapped certificate on hearing category of Smt. Annapurna Pradhan, W/o. Ranjan Kumar Pradhan At Lembodi, P.O.-Gaurangpur, District-Nayagarh issued by Dr. A.K. Panda, Spl. H.A. dtd. 30.9.2010 who was E.N.T. Specialist during that period i.e. on 28.4.2009 has not examined Smt. A. Pradhan and the signature on the body of the Audiometry report is not genuine and it has been tampered. The percentage which has been written is not his handwriting. The copy of the report dtd. 30.9.2010 of Dr. A.K. Panda, H.A. Capital Hospital, Bhubaneswar duly sent by C.M.O., Capital Hospital, Bhubaneswar are enclosed herewith for ready reference. The physically handicapped certificate issued by this office is treated as null and void (this office letter No. 3846 dtd. 1.5.2009 & 4433 dtd. 2.9.2009)".

This document dtd. 18.11.2010 has not been disputed by State rather it has been admitted as would be evident from paragraph 9 of the counter affidavit wherein it has been stated which is being quoted for ready reference.

"9. That in reply to averment made in Paragraph - 8 of the writ petition, it is humbly submitted that the disability certificate indicating 75% hearing impairment in favour of Annapurna Pradhan has been authenticated by the District Medical Board, Nayagrah duly countersigned by the C.D.M.O., Nayagarh

vide certificate No. 3846 dtd. 1.5.2009. The C.D.M.O., Nayagarh has also reported vide letter No. 78 dtd. 6.1.2010 that the certificate is genuine. Considering that verification report Smt. Arnapurna has been awarded 5 more marks on P.H. Category and selected as Anganwadi worker for that Anganwadi Centre securing highest marks in the merit list. Further as per order dtd. 17.8.2010 of Sub-Collector, Nayagarh in Anganwadi Appeal No. 27 of 2010 the C.D.M.O., Nayagarh was again requested to verify the genuineness of the P.H. certificate produced by Smt. Arnapurna Pradhan and to report by 30.8.2010. Since the C.D.M.O., Nayagarh did not submit any report by 30.8.2010 the appeal was rejected on 12.11.2010 by the appellate authority. But after disposal of case, C.D.M.O., Nayagarh had submitted the verification report on 18.11.2010 with an opinion that the P.H. Certificate issued in favour of opposite party No. 4 is treated as null and void".

37. Thus there is no dispute that opposite party No. 4 was engaged on the basis of disability certificate dtd. 1.5.2009. It is also not in dispute that the certificate dtd. 1.5.2009 has been held to be forged as would be evident from report dtd. 18.11.2010 as quoted hereinabove and as such the opposite party No. 4 cannot be said to be legally entitled to get 5 additional marks on account of having disability of hearing impairment, rather opposite party No. 4 since has approached the selection committee by way of submission of forged certificate, her candidature should have been rejected from its inception in view of judgment rendered in the case of Devendra Kumar Vs. State of Uttaranchal and Others, wherein in para-13 which is being reproduced below:

"It is settled proposition of law that where an applicant gets an office by misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eye of the law. "Fraud avoids all judicial acts, ecclesiastical or temporal". (Vide S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, . In Lazarus Estates Ltd. vs-Beasley reported in (1956)1 QB 702 the Court observed without equivocation tha:

" No judgment of a court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything."

It is also settled that if there is any fraud it goes to the inception. The petitioner has raised this issue regarding deciding the veracity of the disability certificate before the Sub-Collector but the Sub-Collector has not answered the same likewise the Addl. District Magistrate has not answered the same rather he has gone into the fact that the issue raised by the petitioner is barred by principle of res judicata but while giving this objection the Addl. District Magistrate has failed to consider that the principle of res judicata has only applicability if the issue will be decided on its merit.

38. Further even assuming that the issue has been decided even then it goes to the authority at any stage that the engagement or appointment or anything has been obtained by playing fraud it has to be struck down by adopting the principle

that illegality cannot be permitted to be perpetuated and the moment it come to the knowledge it has to be rectified. Since the issuing authority of the disability certificate i.e. Chief District Medical Officer, Nayagarh has himself given a declaration that the certificate dtd. 1.5.2009 is not genuine rather the fraud has been played and therefore request has been made to treat the disability certificate as null and void, hence opposite party No. 4 cannot be allowed to get 5 additional marks on the basis of the disability certificate and accordingly the 5 additional marks is to be reduced from the total marks. Not only this, the opposite party No. 4 has played fraud hence his candidature has to be rejected.

39. In consequence thereof the orders passed by the Sub-Collector and Addl. District Magistrate are not sustainable hence the same are quashed. This issue has been answered in favour of the petitioner.

ISSUE NO.4

40. The petitioner has obtained 57.2 marks by the selection committee but not selected rather opposite party No. 4 was selected on the basis of 5 additional marks awarded to her on account of disability certificate of hearing impairment which is found to be forged hence originally opposite party No. 4 since got 53.93 marks hence she will stood second and the petitioner since secured highest marks i.e., 57.2 marks, will be declared to be first candidate. Hence the petitioner is found to be selected for the post of Anganwadi Worker and accordingly this issue is answered in favour of the petitioner.

41. In the entirety of detail facts and circumstances the writ petition is disposed of in terms indicated hereinabove with a direction to the opposite parties to pass consequential order within reasonable period, preferably within three weeks from the date of receipt of copy of this judgment.