
(1998) 09 GAU CK 0003

In the Gauhati High Court

Case No : Writ Appeal No. 49 of 1998 in Civil Rule No. 4081 of 1997

Gita Devi Poddar (SMTI)

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 16-09-1998

Acts Referred:

Citation : (1998) 4 GLT 58

Hon'ble Judges : M. Sharma, J;D. Biswas, J

Bench : Division Bench

Advocate : O.P. Bhati, M.K. Jain and A. Biswas, for the Appellant; R. Hussain, Addl. C.G.S.C., for the Respondent

Final Decision : Allowed

Judgement

D. Biswas, J.—This appeal is directed against the judgment and order dated 2.3.98 passed by the learned Single Judge dismissing the Civil Rule No. 4081 of 1997. Being aggrieved, the Petitioner has preferred this appeal on various grounds incorporated in the memorandum of appeal.

2. The Petitioner was appointed as an agent for sale of Kishan Vikash Patra, National Savings Certificate (VIII Issue) and deposit in Time Deposit Accounts, National Savings Schemes, 1992, Monthly Savings Accounts etc. and a certificate to that effect was granted by the Respondent No. 2 for a period of one year with effect from 19.7.93 to 18.7.94. The Petitioner also entered into an agreement with the Respondents as per requirement of instructions contained in the standardised agency system. The said certificate has been renewed from year to year on completion of necessary formalities and it was due to expire on 19.7.97. As usual, the Petitioner applied for renewal of the certificate of appointment for a further period of one year completion of all formalities. But vide Memo No. DSSA-7/94/43 dated 16.8.97, the Respondent No. 2 terminated the agency and rejected the petition for renewal.

3. Learned Counsel for the Petitioner-Appellant argued that the order terminating

the agency has been issued by the Respondent in violation of the principle of natural justice as the Appellant was not heard before her application for renewal was rejected. The learned Counsel further submitted that the termination order was not issued for any alleged misconduct or under provision of Clause-10 of the agreement and, as such, the Petitioner's application for renewal ought to have been allowed as there is no allegation of any irregularities committed by her in handling the agency.

4. From the circular issued by the Ministry of Finance, Govt. of India, it would appear that the Chapter-9 contains the guidelines relating to the agreement, certificate of authority and renewal of certificate.

5. Clause-12 deals with renewal of certificate. It does not specify the circumstances under which an application for renewal may be rejected. The agreement signed by the Appellant- Petitioner as per provision of Clause-7 contains a clause which reads as follows:

10. This agreement may be terminated by either party by giving three months notice to the other provided, however, the Government shall be at liberty to terminate the agency at any time without notice and without assigning any reason for the same.

6. The consideration for which the learned Single Judge rejected the writ petition is that the Petitioner is a signatory to the above agreement which provides for termination of the agency by either party by giving three months notice and that the powers are also reserved with the Respondents to terminate the agency at any time without notice. The period of licence having expired, the learned Single Judge considered it fit not to disturb the impugned order issued by the Respondent No. 2. But in our considered opinion, this is not a termination of the agency for any alleged misconduct. There is also no allegation of violation of any rules/procedure. The termination does not appear to be as per provision of agreement contained in Clause-10. It is a case where the renewal of agency has been refused without showing any reason. The agency given to her in the year 1993 was extended from time to time and it was due to expire on 19.7.97. The performance of the Appellant as an agent has never been questioned. It was a source of her livelihood. In our opinion, therefore, it was not fair on the part of the Respondents to refuse renewal without recording any reason. The impugned order (Annexure-C) does not show as to why the renewal was not allowed. Every State action must be accompanied by reason. No counter has been filed by the Respondents to justify the rejection of renewal application. Absence of any reason in the impugned order itself is suggestive of bias and arbitrariness. In our opinion, it is a case where the Petitioner-Appellant ought to have been heard before her application for renewal was rejected. This act on the part of the Respondent No. 2 is contrary to the settled law that no order having civil consequences can be passed by the authority without giving a reasonable opportunity of being heard. Therefore, the order passed by the Respondent No. 2 vide Annexure-C cannot be sustained.

7. Here, we may quote the decision of the Supreme Court reported in LIC of India and Another Vs. Consumer Education and Research center and Others, In para 27, the Supreme Court held as follows:

27. In the sphere of contractual relations the State, its instrumentality, public authorities or those whose acts bear insignia of public element, action to public duty or obligation are enjoined to act in a manner i.e. fair, just and equitable, after taking objectively all the relevant options into consideration and in a manner that is reasonable, relevant and germane to effectuate the purpose for public good and in general public interest and it must not take any irrelevant or irrational factors into consideration or appear arbitrary in its decision. Duty to act fairly in part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty or obligation must be informed by reason and guided by the public interest.

8. In D.K. Yadav v. J.M.A. Industries Ltd. (1993) 2 SCC 259 , in para-8, the Supreme Court has held:

8. The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned persons.

9. Similar views were also available in Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, Relying on the law laid down by the Supreme Court from time to time and on consideration on the decision of the above mentioned cases, we are of the opinion that it was unjust and unfair on the part of Respondent No. 2 to refuse to renew the agency without hearing the Appellant-Petitioner and without recording reason.

10. learned Counsel for the Respondents has relied upon the decisions of the Supreme Court in Assistant Excise Commissioner and Others Vs. Issac Peter and Others, and in State of Gujarat and Others Vs. Meghji Pethraj Shah Charitable Trust and Others, In these two cases, the Supreme Court dealt with the matters relating to the contract and laid down the law that when a matter is covered by a contract, the writ petition is not maintainable since it is a public law remedy, and is not available in private law as the matter is governed by a non-statutory contract. But in the instant case, the cause of action arose not because of termination of agency in terms of the agreement contained in Clause-10. The action taken by the Respondent No. 2 is independent of the contractual right of the Respondent No. 2 to terminate an agency with three months' notice. Therefore, the ratio of these two cases relied upon by the Respondents cannot operate as a clog in exercising the jurisdiction of this Court under Article 226 to

enforce natural justice.

11. In the result, the appeal is allowed and the judgment dated 2.3.98 passed by the learned Single Judge is set aside. The writ petition is allowed and the impugned order dated 16.8.97 (Annexure-C) is hereby set aside. The Respondents are directed to consider the application of the Petitioner for renewal of agency in accordance with the rules after giving the Petitioner an opportunity of being heard.

12. Parties are directed to bear their respective costs.