
(1978) 11 OHC CK 0003

In the Orissa High Court

Case No : Original Jurisdiction Case No. 514 of 1978

Jogendra Mohanty

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 09-11-1978

Acts Referred:

Citation : (1979) 47 CLT 73

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.N. Misra, J.—Petitioner is a Senior Inspector of Co-operative Societies. His services were placed at the disposal of the Community Development and Social Welfare Department and he was posted as Co-operative Extension Officer in the Cuttack Sadar Block with effect from 1-11-1977 under the overall control of the Collector of Cuttack. On 23-2-1978, the Collector passed an order for transfer of the Petitioner from his posting in the Sadar Block and the District Development Officer on 27-2-1978 passed a consequential direction that the Petitioner be shifted to Korei Block as Co-operative Extension Officer and the Co-operative Extension Officer of Korei be posted in the vacancy caused by the Petitioner's transfer. Petitioner thereupon made a representation on the basis of which on 17th of March, 1978, the Collector directed that the transfer may be deferred until the first week of May, 1978, but before it was implemented, on 20th of March, 1978, the order of transfer became operative and Petitioner handed over charge. On 5-4-1978, Petitioner filed the present writ application challenging his transfer by pleading that the order of transfer had been brought about by heavy pressure put by the local Member of the Legislative Assembly on the Collector and a group of influential people had utilised the services of the local M. L. A. for bringing about the transfer of the Petitioner as they were affected adversely when Petitioner acted in due discharge of his duties. Petitioner further pleaded that the Assistant Registrar of Co-operative Societies, Cuttack, who had no

administrative control over the Petitioner made false reports against him to the Collector and a bias was created against the Petitioner without any foundation. On such motivated move and completely false allegations, the transfer was effected and particularly because it was brought about by pressure put by outside agencies and the Collector did not exercise his own discretion in the matter in the interest of public administration, the order of transfer has become vulnerable and is liable to be quashed.

2. The Collector in a personal affidavit has denied the allegations and has maintained that the order of transfer was made in consideration of the administrative exigencies and was absolutely a bona fide act not liable to be questioned in a judicial proceeding.

3. Learned Additional Government Advocate produced the administrative file relating to transfer of Co-operative Extension Officers wherein the impugned transfer has been dealt with. From the note-sheets in the file, it appears that on 11th of January, 1978, there is a note to the following effect:

A. D. M. told me over phone today that Collector wants the C. E. O. Sadar Block should be transferred from there....

In the meantime, the Assistant Registrar of Co-operative Societies of Cuttack Sadar, reported certain allegations against the Petitioner and the District Development Officer in his note dated 1-2-1973 very guardedly indicated that the Petitioner had been recently posted and there appeared to be an anxiety of every Assistant Registrar of Co-operative societies to have his own man posted within his jurisdiction. The Additional District Magistrate indicated that the role of the Assistant Registrar of Co-operative Societies is to ensure proper and smooth management of the cooperative institutions and collection of Co-operative dues. While frequent disturbances from one station to another without public interest of the co-operative Extension Officers would not be in the interest of administration, in the instant case, according to the Additional District Magistrate, the proposed transfer of the Petitioner seemed to be in the greater interest of co-operative institutions. On the basis of the said recommendation of the Additional District Magistrate, the Collector passed the following order:

The Sadar C. E. O. may be transferred in the first instance as the M. L. A. Sadar has also repeatedly complained against him.

As regards the other two we may obtain the views of D. R. Cs. who may also suggest substitutes as he might be having up-to-date collection performance report on all C. B. Os.

From the various notings and the ultimate order of the Collector, it is clear that independent of the local M. L. A., there was already a proposal for transferring the Petitioner from the Cuttack Sadar Block. The Collector in his order of 23rd of February, 1978, appears to have taken note of the fact that there were complaints from other sources and added to them, repeated complaints from the

local M. L. A. had also come. The proposal to transfer the Petitioner from his then posting had been mooted more than a month before the order of transfer. From the records produced, we are not in a position to hold that the local M. L. A. had brought pressure to bear upon the Collector and the Collector without exercising his own discretion was entirely guided by the local M. L. A. in directing transfer of the Petitioner. In his return to this Court, the Collector has specifically indicated the circumstances in which he came to form his own opinion that Petitioner's transfer was warranted in the public interest.

4. A Co-operative Extension Officer in discharge of his duties is bound to have public contacts and the success of the co-operative movement and appropriate functioning of the Societies would considerably depend upon the performance of the Co-operative Extension Officer. It is, therefore, necessary that such an officer should discharge his functions in a manner congenial to the co-operative movement and keeping in tune with the professed policy of the executive Government. There may be a case where the officer may be honest and dutiful; yet being not capable of managing his job with candor and amity, would soon bring about disrepute and give rise to a grievance against him and in due course, the administration. The administrative superior is bound to take note of these aspects and with a view to avoiding public agitation, require his shifting. There is no force in the contention of Petitioner's counsel that by 11th of January, 1978, there was no complaint against the Petitioner and the Collector had no basis for suggesting to the Additional District Magistrate the transfer of the Petitioner. When the Collector formed his own opinion and instructed the Additional District Magistrate in the manner indicated above, it was not necessary for the Collector to indicate the reasons to the Additional District Magistrate or to make a note of it in the relevant file. If we accept counsel's contention and look for reasons in matters of this type, the executive authority would not be able to function.

5. Petitioner has no right to be posted at any particular place. On the other hand, he is obliged to serve Government at any station he may be posted to. Every public officer, however low or high his position may be, is a servant of society and in discharge of duties attached to such public office is obliged to act as a trustee. His actions are, therefore, bound to be honest and the considerations which guide his actions are bound to be public interest. We have not been shown any material from which we can reasonably hold that the transfer of the Petitioner has been brought about for collateral reasons or is a mala fide act. It is very easy to allege mala fides, but until there is acceptable material, it would not be appropriate to read motives into the action of the Collector in transferring the Petitioner.

6. Mr. Rath for the Petitioner relied upon certain administrative instructions, wherein the general guideline for transfer has been indicated. It has been stated that officers should not be too frequently transferred and the normal time of transfer should be after the month of April when the academic session in schools and colleges the over so that the children of the Government servants may not

suffer in the education and the like. Mr. Rath specially emphasised upon the indication that if transfers were being made 10 contravention of the guideline, Government's order should be obtained prior to effecting transfer. These, in our view, are guidelines and are not enforceable particularly at the instance of the affected officer. These guidelines create no rights in the officer and he is not entitled to rely on the guidelines to challenge the order of transfer.

7. Mr. Rath for the Petitioner relied upon several authorities where transfers had been interfered with by Courts and where for breach of administrative instructions, the Courts had granted relief to the affected parties. We do not consider it necessary to advert to these authorities because with the general propositions indicated therein there could be no dispute and even learned Additional Government Advocate has not challenged the correctness of the principles indicated by these authorities. On the facts, as we have already stated, there is no scope to accept Petitioner's contention that the impugned transfer was the outcome of pressure brought about by the local M. L. A. or was a mala fide act for collateral consideration. We agree with Mr. Rath that the public "officers who are charged with the duty of controlling their subordinates have to act fairly in the matter of exercise of their control, and should not be guided by extraneous agencies. But in the matter of forming their own opinion, they are bound to make assessment of performance of such officers and in that process public opinion has to play its role. The local Member of the Legislative Assembly who is a popular representative in a democratic set up has his position there. We are, therefore, not in a position to agree with Mr. Rath that the Collector was not justified in taking note of repeated complaints of the local M. L. A.

8. The writ application has no merit at all and the same is accordingly dismissed. Ordinarily, the opposite parties should have been entitled to costs depending upon the result of the lis, but in consideration of the fact that the Petitioner is a petty officer, we do not think it appropriate to award costs against him in this proceeding.

B.K. Ray, J.

I agree.

Writ application dismissed.