
(1997) 03 OHC CK 0001

In the Orissa High Court

Case No : Original Jurisdiction Case No. 13336 of 1996

Madhabananda Nayak

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 31-03-1997

Acts Referred:

Contract Act, 1872 — Section 201

Citation : AIR 1998 Ori 1

Hon'ble Judges : P.K. Misra, J;D.M. Patnaik, J

Bench : Division Bench

Advocate : S.K. Das, S.K. Nayak-3, D.K. Das, K. Rath and P. Routray, for the Appellant; Additional Government Advocate, R.N. Panigrahi, D. Panigrahi, D.D. Nayak, S. Swain, D.P. Pradhan, M. Mohanty, R.K. Pradhan and J. Pal, for the Respondent

Final Decision : Allowed

Judgement

D.M. Patnaik, J.—Grievance of the petitioner is that although he was appointed as a Storage Agent for Tihidi Block in the district of Bhadrak for the year 1991-92 and the period of agency had been extended from time to time and it was so extended vide letter dated 31-10-1996 of the Managing Director, Civil Supplies Corporation (opposite party No. 3) and was to expire at the end of November, 1996, opposite party No. 4 by his letter dated 19-11-1996 under Annexure-3 appointed opposite party No. 6 as storage agent for Tihidi Block.

2. Opposite party No. 5 has filed a counter-affidavit sworn to by the Civil Supplies Officer, Bhadrak, admitting appointment of the petitioner as Storage Agent for Tihidi Block during the year 1995-96 from December, 1995 to November, 1996, and disputing the allegations of mala fides and arbitrariness made in the writ petition. In paragraph 7 of the counter, opposite party No. 5 took the stand that the District Manager of the Corporation only communicated the selection of opposite party No. 6 as Storage Agent under Annexure-3, but the appointment of the petitioner has neither been cancelled nor modified as claimed

in the writ application and rather the same has been kept in abeyance by the Corporation Head Office for enquiring into the allegations of misconduct made against the petitioner.

3. We have heard Mr. S.K. Das, learned Counsel for the petitioner, Mr. R.N. Panigrahi, learned Counsel for opposite parties 2 to 4 and Mr. D. Nayak, learned Counsel for opposite party No. 6.

The fact that the petitioner was to continue as Storage Agent till November, 1996, is admitted. The letter under Annexure-3 indicates that opposite party No. 6 has been selected for appointment as Storage Agent for Tihidi Block for the financial year 1996-97 and the said period is to expire by 31-3-1997. To know the real state of affairs, we had asked the learned Counsel for the Corporation to produce the original record relating to the alleged misconduct on the part of the present petitioner. Annexure-A to the counter-affidavit filed on behalf of opposite parties 2 and 3 is the letter dated 17-10-1996 of the Minister of State for Public Relations addressed to the Chief Minister expressing public grievance in the working of the petitioner. On this allegation, an enquiry was made by the General Manager (Administration)-cum-Enquiring Officer, who submitted his report, annexed as Annexure-B to the counter-affidavit. The enquiry report reveals that allegation of black-marketing could not be proved and the allegations of short weighing and misbehaviour related to the past period. The finding in regard to delay in delivery of the commodities could not be said to be culpable particularly when there has been no finding that it in any way affected the Public Distribution System. Therefore, we are of the view that there cannot be any justification for cancellation of the agency.

4. We accordingly dispose of this writ petition with a direction to the opposite parties that since the agency for the period 1996-97 is already over, the petitioner's case may be considered for the period 1997-98 keeping in view the observations made by this Court in a similar matter in O.J.C. No. 13279 of 1996 (*Nityananda Biswal v. State of Orissa*) disposed of today as well as in the case of *Ashok Agrawal v. State of Orissa* reported in (1996) 82 CLT 239, Needless to point out that while considering the case of the petitioner, the authorities should not be influenced by the findings in the enquiry report (Annexure-B).

5. We make no order as to costs.

P.K. Misra, J.

6. I agree.