
(2006) 06 OHC CK 0025

In the Orissa High Court

Case No : Writ Petition (C) No. 14131 of 2005

Maman Ram Agrawalla

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 21-06-2006

Acts Referred:

Citation : (2006) 2 OLR 211

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : Manoj Kumar Mishra, for the Appellant; A.K. Mishra, A.S.C. for O.P. No. 2 and A.K. Acharya, for O.P. No. 5, for the Respondent

Judgement

L. Mohapatra, J.—This is the 5th journey of petitioner to this Court. In this writ application, the petitioner prays for a direction to the opposite parties 2 to 4 to appoint him as Storage Agent for Harbhanga Block for the year 2005-2006 and execute the agreement within a specified period.

2. The case of the petitioner is that he had applied for appointment as Storage Agent for Harbhanga Block in the year 1992 and after necessary inquiry, the Collector, Boudh (O.P. No. 4) found the petitioner eligible for such appointment and recommended his case to the Orissa State Civil Supplies Corporation Ltd. for such appointment. The petitioner was therefore appointed as storage agent for Harbhanga Block for the year 1992-1993 and, thereafter, continued as such till the dispute arose in the year 2003-2004. For the year 2003-2004, the opposite party No. 4-Collector after conducting inquiry had recommended the name of the petitioner for continuance as storage agent for the aforesaid Harbhanga Block and the matter was pending before the Orissa State Civil Supplies Corporation for issuance of appointment order. While the matter stood thus, the opposite party No. 4 issued notice to the petitioner to show cause on 1.2.2004 as to why he should not be debarred from being appointed as storage agent for the financial year 2003-2004 on the ground that his relative is a miller agent and has commercial link with a transport agent of Schematic Rice of the district Boudh.

The petitioner Submitted his reply to the aforesaid notice to show cause on 8.2.2004 refuting the allegation and in the said reply, he had specifically stated that he is in no way related to any miller agent nor is commercially linked with any transport agent. In the said reply, he also requested the opposite party No. 4 to take immediate steps for appointing him as storage agent for the year 2003-2004. After submission of the reply, it is the case of the petitioner that he approached this Court in W.P.(C) No. 1481 of 2004 praying for quashing the notice to show cause. However, the said writ application was not pressed as consideration of the case of the petitioner for the year 2004-2005 had become due. After submission of the reply, an inquiry was conducted by the Sub-Collector and a report was submitted on 23.2.2004 and it was made clear in that report that the petitioner had no commercial link with any miller agent. It is, therefore case of the petitioner that on the basis of such report, his case should have been recommended again by the Collector-opposite party No. 4 for appointment as storage agent for the year 2004-2005. No action having been taken, the petitioner again approached this Court in W.P.(C) No. 887 of 2005 for appointment as storage agent for Harbhanga Block till 31st March, 2005 in view of the fact that the other storage agents appointed in the district were allowed to continue till the said period without a fresh appointment/agreement. The aforesaid writ application was disposed of on 24.1.2005 directing the opposite party No. 4 to consider the reply of the petitioner as well as representation made by him for continuance as storage agent for the aforesaid Harbhanga Block for the year 2004-2005. It is the case of the petitioner that despite the orders passed by this Court in the aforesaid writ applications, no action was taken by the opposite party No. 4 to allow the petitioner to continue as storage agent for the year 2004-2005. The petitioner, therefore, again approached the Collector by way of representation for extending the appointment as storage agent till 31 st March, 2005 and no action having been taken in the said representation, the petitioner again approached this Court vide W.P.(C) No. 2304 of 2005 and the said writ application was disposed of on 11.3.2005 directing the opposite party No. 4 to dispose of the representation and further directing that if the other storage agents in the district have been allowed to continue till 31 st March, 2005, there is no reason for discriminating the petitioner. The further case of the petitioner is that in spite of the aforesaid order, extension was not given to the petitioner and his representation was rejected on the ground that appointment for the year 2005-2006 would be made on the basis of guidelines issued by the Civil Supplies Corporation. The petitioner again approached this Court in W.P.(C) No. 4787 of 2005 on the ground that other storage agents were allowed to be continued without fresh agreement being executed for the year 2005-2006 and the petitioner has been discriminated. The said writ application was disposed of on 26.4.2005 directing the opposite party No. 4 to reconsider the case of the petitioner for the aforesaid year in the light of allegations made by the petitioner that other storage agents have been allowed to continue without fresh agreement being executed. In the, present writ application, the petitioner submits that in spite of repeated orders passed by this Court, no action is being

taken and the petitioner has not been allowed to continue as storage agent for Harbhanga Block for the year 2005-2006 and, accordingly the prayer has been made for a direction to the opposite party-4 to allow the petitioner to continue as storage agent for the year 2005-2006.

3. A counter affidavit has been filed on behalf of opposite party No. 4. In paragraph-3 of the counter affidavit, it is stated that vide letter dated 31.10.2005, the Managing Director, Orissa State Civil Supplies Corporation Ltd. has communicated the select list of persons to be appointed as storage agent for the financial year 2005-2006. On the basis of the above, one Sarat Bhusan Mohanty-opposite party No. 5 has been appointed as storage agent for Harbhanga Block (Part) and has executed agreement on 7.11.2005. The learned counsel for the State with reference to the aforesaid paragraph submits that in view of above, the writ application has become in fructuous. It is also the case of the opposite party No. 4 in the counter affidavit that the petitioner had not been given appointment as storage agent for Harbhanga Block for the year 2003-2004 and, therefore the question of continuance like others did not arise. In paragraph-6 of the counter affidavit, it is stated that since the petitioner had not been given appointment for the year 2003-2004, a committee formed for the purpose decided to operate the storage agency for Harbhanga Block departmentally as the infrastructure facilities available in the Harbhanga Block were adequate to operate departmentally for the greater interest of the general public and also to accommodate the existing staff. In paragraph-17 of the counter affidavit, it is stated that though the name of opposite party No. 5 had not been recommended by the Collector for appointment as storage agent for the year 2005-2006, still he was selected by the State Level Selection Committee and, therefore, the Collector had no other option except issuing appointment order to the opposite party No. 5 appointing him as storage agent for a part of Harbhanga Block for the year 2005-2006. The counter affidavit filed by the Orissa State Civil Supplies Corporation and its officers as well as opposite party No. 5 are no different than what has been stated in the counter affidavit filed by the opposite party No. 4.

4. On perusal of the writ application as well as the counter affidavits, it is clear that the Collector had initially recommended the name of the petitioner for appointment as storage agent for the year 2003-2004. While the matter was pending before the Civil Supplies Corporation, notice to the show cause issued to the petitioner and the petitioner was directed to submit a reply to the allegations made in the show cause notice. The petitioner submitted his reply stating that he is no way related to any miller agent nor transport agent and the matter came before this Court on four occasions by way of different writ applications and the Court had passed orders for consideration of the case of the petitioner. As per the report of the Sub-Collector, it is stated by the petitioner, that there was no link between the petitioner and miller agent or transport agent. Therefore, on the basis of such report, the petitioner could be again appointed as storage agent for Harbhanga Block for the year 2003-2004 and thereafter. However, he was not

given appointment and was also not allowed to continue as storage agent on the ground that he had not been appointed as storage agent for the aforesaid block for the year 2003-2004. In the counter affidavit filed by the opposite party No. 4, a stand is taken to the effect that the Collector is free to introduce innovation keeping in view the ground realities and in exercise to such power/jurisdiction, the Collector refused the repeated representations of the petitioner and continued the work of storage agency for Harbhanga Block departmentally since infrastructure and staffs are available. If that be so, the question arises as to how an exception was made in the case of opposite party No. 5 and why the Collector did not exercise his discretion which he exercised against the petitioner so far as the opposite party No. 5 is concerned. The reply given in paragraph-17 of the counter affidavit is highly unsatisfactory. It is stated in the said paragraph that though the name of the opposite party No. 5 had not been recommended by the Collector, on the basis of letter issued by the Corporation, opposite party No. 5 was given appointment to operate as storage agent in respect of part of Harbhanga Block. If the Collector could exercise his discretion in spite of several orders passed by this Court against the petitioner, there was no reason for the Collector not to exercise his discretion against recommendation made by the Corporation. I am, therefore of the view that the Collector has not acted impartially while disallowing the petitioner to continue as storage agent and allowing the opposite party No. 5 to be appointed as storage agent for the year 2005-2006. However, the agency period for the year 2005-2006 is already over and the question of appointment for the year 2006-2007 is required to be considered. Though in the writ application there is no such prayer for consideration of the case of the petitioner for the year 2006-2007, considering the conduct of the Collector as stated above and the averments made in the counter affidavit filed "by the opposite party No. 4, dispose of the writ application with the following directions :-

For the year 2006-2007, if required infrastructure is available, the work of storage agency shall be done departmentally and no one shall be appointed or allowed to be continued as storage agent for the said block for the year 2006-2007. If, it is not possible to continue storage agency departmentally for the aforesaid year, the case of the petitioner vis-?-vis the opposite party No. 5 shall be reconsidered and who ever is found more meritorious in terms of the guidelines issued for such appointment shall be appointed as storage agent for the aforesaid Block for the year 2006-2007. Such decision be taken within one month from the date of communication of this order.

Requisites for communication of this order to the opposite parties 2 to 4 be filed within three days from today.