
(2006) 03 OHC CK 0055
In the Orissa High Court
Case No : Writ Petition (C) No. 14769 of 2005

Mihir Kumar Sahoo

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 20-03-2006

Acts Referred:

Citation : (2006) 102 CLT 173 : (2006) 1 OLR 484 Supp

Hon'ble Judges : N. Prusty, J

Bench : Single Bench

Advocate : A. Mohanty, M.K. Das, S. Mallik, L. Dash, M.R. Das and Barija Das, for the Appellant; S. Mishra (2), A.K. Misra and M.K. Dash for O.P. Nos. 2 and 4, A.K. Sharma and P.K. Dash for O.P. No. 6 and Additional Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

N. Prusty, J.—The petitioner has filed this writ petition for a direction to the opposite parties to select and appoint him as a Storage Agent of Ghatagaon Block as per the recommendation made by the Collector, Keonjhar for the year 2005-2006 and to quash the selection made by opposite party No. 2/Orissa State Civil Supplies Corporation Ltd. (hereinafter referred to as "the Corporation") vide letter dated 3.11.2005 (Anenxure-5 to the writ petition.

2. The petitioner alleges that he had applied to the Collector, Keonjhar for recommending his name for appointment as a Storage Agent of Ghatgaon Block in the district of Keonjhar. The Collector, Keonjhar recommended the names of the petitioner along with three others for such appointment. The name of opposite party No. 6 was also considered by the Collector, but as he was not found suitable, his name was not recommended. Even though the Collector did not recommend the name of opposite party No. 6, he was selected by the Corporation for appointment as one of the Storage Agents. As such, the petitioner was not selected in variance with the recommendation of the Collector. Both the cases of the petitioner and opposite party No. 6 were supported by the

recommendations of the local public representative, i.e., M.L.A., Telkoi. While selecting opposite party No. 6, opposite party No. 2-Corporation mechanically acted upon the recommendation of the Public representative without assigning any valid reason.

3. In the rejoinder affidavit, the petitioner has stated that since both the petitioner as well as opposite party No. 6 were recommended by the Public Representative, while selecting for appointment as Storage agent, it was incumbent upon the Corporation to give weightage to the recommendation made by the Public Representative in favour of both the petitioner as well as opposite party No. 6 and also the recommendation of the Collector in favour of the petitioner alone. The Corporation was also obliged in law to assign a valid reason for selecting opposite party No. 6 while rejecting the case of the petitioner in differing from the recommendation of the Collector. As such, the Corporation has not followed Clauses 2 and 7 of the "Guidelines for Appointment of Storage Agents for the Financial Year 2005-2006" (Annexure-3) (hereinafter referred to as "the Guidelines") in its proper perspective. The petitioner has further stated that he was an existing Storage Agent for Ghatagaon Block and his past performance was highly satisfactory. After due enquiry, the Collector found him suitable and recommended his name to the Corporation, but did not recommend name of the opposite party No. 6. The Public Representative recommended the cases of both the petitioner as well as opposite party No. 6. Opposite party No. 6 is an old man of 82 years and is unsuitable for such business. The petitioner is a man of Keonjhar district while opposite party No. 6 is an outsider and belongs to Bhadrak district. As such, in that view of the matter, the petitioner ought to have been selected for appointment as a Storage Agent by opposite party No. 2 instead of opposite party No. 6.

4. Opposite party No. 2/Orissa State Civil Supplies Corporation along with opposite party No. 4/Civil Supplies Officer-cum-District Manager, OSCSC Ltd., Keonjhar have filed their counter affidavit, inter alia, stating therein that as per Clause 2 of the Guidelines the Collector's recommendation shall be given weightage, but opposite party No. 2 shall have to give weightage also to the recommendation received from the Public representative through Government for selection and appointment of suitable Storage Agent. In the instant case, the Corporation received recommendation of the Public Representative through the State Government on 10.5.2005 for selection and appointment of opposite party No. 6 who had already applied for such appointment through proper channel. As such, since recommendation of the Public Representative in favour of opposite party No. 6 was received through the Government prior to completion of the selection process, i.e., on 10.5.2005, the Corporation on proper consideration of all the recommendations, has validly selected and appointed opposite party No. 6 as Storage Agent for the year 2005-2006. The recommendation of the Collector in favour of the petitioner was not based on any recommendation by the Public Representative. Opposite party No. 6 having been selected and appointed as a Storage Agent, has already executed the agreement by furnishing security on

24.11.2005. But due to interim order of this Court dated 5.12.2005, opposite party No. 4 was not able to allow opposite party No. 6 for distribution of the essential commodities to the respective sub-wholesalers/retailers/consumers. The petitioner before his appointment illegally deposited the renewal fee of his expired licence on 1.4.2005. In the agreement by which the storage agency of the petitioner was temporarily extended, it was categorically stipulated that such temporary extension shall not be a ground for fresh appointment for the next year. As such extending the petitioner's licence period temporarily till the final selection and appointment is made for the year 2005-2006, can never be said that the petitioner shall be deemed to have been validly appointed till the end of 31.3.2006. There is no violation of the Guidelines in appointing opposite party No. 6 as a Storage agent. The Corporation has not received any recommendation made by the Public Representative at any point of time in favour of the petitioner for appointing him as a Storage Agent for the year 2005-2006, which has been annexed as Annexure-7 to the rejoinder affidavit filed by the petitioner. Similarly, the Corporation has also not received any letter of the Public Representative at Annexure-8 to the rejoinder affidavit. The selection of the Storage Agent for the year 2005-2006 in respect of Keonjhar district was completed on 31.10.2005 and the so-called recommendation and the letter were of a much later date than the date of completion of selection of the Storage Agent on 31.10.2005 and the agreement-dated 24.11.2005 (Annexure-B/6) executed by the Corporation with opposite party No. 6. The appointment order issued to opposite party No. 6 on 3.12.2005 by opposite party No. 4 by the order of the Collector, Keonjhar (Annexure-C/6) was also much prior to the so-called letter dated 19.12.2005 (Annexure-8). It is further stated by opposite parties 2 and 4 that Clause (2) of the Guidelines (Annexure-3) specifically provides that recommendation of the Public Representative received at the level of the Corporation duly forwarded by the Government will be given weightage for selection/appointment of Storage Agent. In the instant case, the Public Representative has recommended the case of opposite party No. 6 for appointment as a Storage Agent, the same has been duly forwarded by the Under Secretary to Government, Food, Supplies and Consumer Welfare Department and the same was received by the Corporation on 10.6.2005 (A Xerox copy of the said recommendation duly forwarded by the Government was filed before the Court by opposite party No. 2 at the time of hearing of this case along with the notes of argument). After receipt of all the recommendations, the board of Directors of the Corporation as per Clause 7 of the Guidelines, selected opposite party No. 6 for appointment as a Storage Agent of Ghatagaon Block. As such, there is no illegality or irregularity committed by opposite party No. 2 in selecting and appointing opposite party No. 6 as a Storage Agent.

5. Opposite party No. 6 in his counter affidavit has stated that in the Guidelines for appointment of Storage Agent for the financial year 2005-2006, there is no age limit for appointment of a person as Storage Agent. Annexure-5 to the writ petition clearly indicates that one Smt. Suprasini Sahoo, who is a woman, has

also been appointed as a Storage Agent. As such, age and sex are no bars for appointment of Storage Agent. Case of opposite party No. 6 was considered on the basis of the terms of Clauses 2 and 7 of the Guidelines. There is also no bar in the Guidelines for appointment of a Storage Agent if an applicant does not belong to the same district. The petitioner cannot claim to be appointed as a storage Agent as a matter of right as because he was a Storage Agent for the previous years and worked for the extended period. After selection of opposite party No. 6 by the Corporation as a Storage Agent, appointment order dated 3.12.2005 was issued in his favour by the District Manager of the Corporation, by order of the Collector, Keonjhar. In the recommendation of the Collector, Keonjhar, the petitioner's serial number was 2. The persons recommended by the Collector at Sis. 3 and 4 have been appointed as Storage Agents along with opposite party No. 6. The petitioner has not challenged the appointment of the persons who were below him at Serial Nos. 3 and 4, but he has chosen only to challenge the appointment of opposite party No. 6, who was appointed on the basis of the recommendation made by the Public Representative received at the level of the Corporation and duly forwarded by the Government, for which weightage has been given for selection and appointment as a Storage Agent as per Clause 2 of the Guidelines.

6. Heard Mr. A.K. Mohanty, Learned Senior Advocate for the petitioner, Mr. A.K. Misra, learned Counsel for the opposite parties 2 and 4 and Mr. A.K. Sharma, learned Counsel for opposite party No. 6 and the Learned Additional Standing Counsel for the State.

7. As it appears, opposite party No. 2-Corporation has stated in clear and categorical terms that the recommendation of the Public Representative dated 29.11.2005 and the letter dated 19.12.2005 (Annexure-7 and 8 to the rejoinder affidavit) filed by the petitioner have never been received by the Corporation. The selection of Storage Agent for the year 2005-2006 for Keonjhar District was completed on 31.10.2005. The agreement with newly appointed Storage Agent/opposite party No. 6 was executed on 24.11.2005. Thereafter, order of appointment in favour of opposite party No. 6 was issued on 3.12.2005. As such, selection of Storage Agent as well as execution of agreement with the newly appointed Storage Agent was already over much prior to the date of so-called recommendation of the Public Representative in favour of the petitioner and also the second recommendation letter of the Public Representative dated 19.12.2005 was issued much after the selection, execution of agreement as well as issuance of the order of appointment in favour of opposite party No. 6 as Storage Agent. In view of the above, even if the Corporation would have received both the recommendation/letter, nothing could have done in favour of the petitioner, so far as selection/appointment/execution of agreement as well as issuance of appointment order, are concerned. The averments made in the writ petition as well as in the rejoinder affidavit filed by the petitioner do not indicate that the recommendation of the Public Representative in favour of the petitioner was also duly forwarded by the Government, which would have enabled him to get

weightage for selection and appointment as Storage Agent, as has been done in the case of opposite party No. 6. Further more, the recommendation of the Public Representative in favour of opposite party No. 6 was also duly forwarded by the Government and received by the Corporation prior to the completion of selection process dated 31.10.2005, but the petitioner has not produced a scrap of paper indicating that his so-called recommendation of Public Representative was also duly forwarded to the Corporation by the Government, as required under Clause 2 of the Guidelines.

8. Clauses 2 and 7 of the Guidelines are quoted herein below for better appreciation:

Clause 2: The Collector, after causing necessary inquiry through the ADM/Sub-Collector or any other Senior Officer shall forward the application along with their specific recommendation, for appointment of Storage Agents. The suggestion, if any, received from the Public Representatives may be considered by the Collector before sending his recommendation. The recommendation of the Collector shall be given weightage. Also recommendation of Public Representatives received at the level of the Corporation duly forwarded by the Government will be given weightage for selection/appointment of Storage Agent.

Clause 7: The Board of Director of OSCSC Ltd. Reserves the right of selection and also the right of appointment to itself and it may for valid reasons select and appoint eligible applicant even at variance with recommendation of the Collectors. However, the Corporation may authorize the Collector concerned to issue the letter of appointment to the person(s) selected by the Corporation and to execute agreements for the purpose.

The story narrated by the respective parties clearly indicates that the recommendation of the Public Representative in favour of opposite party No. 6, duly forwarded by the Government, was received by the Corporation prior to the date of completion of the, selection process and the Corporation also reserves the right, for valid reasons, to select and appoint eligible applicant even at variance with recommendation of the Collector. Accordingly, in the instant case, selection of opposite party No. 6 for appointment as a Storage Age was properly made by the Corporation, after, receipt of all the recommendations and he was selected by the Corporation for such appointment on the basis of the recommendation of Public Representative duly forwarded by the Government, thereby giving weightage to such recommendation, for his selection and appointment as Storage Agent. As per Clause 7 of the Guidelines, as indicated above, the Corporation has also every right to appoint any person other than the persons recommended by the Collector, As such, the Corporation has not violated the terms and conditions of the guidelines, in selecting and appointing opposite party No. 6 as Storage Agent.

9. Considering the submissions made by the learned Counsel for the respective parties and keeping in view the facts and circumstances of the case as well as

the impugned order, in my considered view, there is no illegality, irregularity or manifest error of law in the process of selection adopted by the Corporation, in selecting opposite party No. 6 as one of the Storage Agents in respect of Ghatagaon Block.

10. The writ petition is accordingly dismissed as the same is devoid of any merit.