

(2024) 06 OHC CK 0132
In the Orissa High Court
Case No : Writ Petition (C) No. 11415 Of 2015

Niranjan Parida

APPELLANT

Vs

Orissa State Cashew Development Corporation Ltd. & Anr

RESPONDENT

Date of Decision : 25-06-2024

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2024) 06 OHC CK 0132

Hon'ble Judges : Dr. S.K. Panigrahi, J

Bench : Single Bench

Advocate : D.K. Sahu, G.R. Mohapatra, A.K. Dash

Final Decision : Dismissed

Judgement

Dr. S.K. Panigrahi, J

1. The Petitioner through this Writ Petition has challenged the order passed by the Divisional Manager, OSCEDC, Bhubaneswar vide letter No.371/OSCDC dated 05.04.2014 and the order dated 10.06.2014 passed by the Managing Director, OSCEDC arbitrarily without appreciating the materials available on record.

I. CASE OF THE PETITIONER:

2. The brief fact of the case is that:

(i) The Petitioner was working as Plantation Assistant in Orissa State Cashew Development Corporation Ltd. (hereinafter referred to as OSCDC) since 1981 vide appointment letter No -2040, dated 03/09/1981. The petitioner was subsequently performing the duty of Plantation Supervisor i.e. In-charge, Plantation Supervisor, in the year 2006 and entrusted for Production of Cashew graft.

(ii) The matter of allegation arose when a target given to the petitioner to raise cashew graft of 1,50,000 (One Lakh Fifty Thousand) for the year 2012 but due to negligence on the part of Department like Supply of polythine cashew seed and

funds, the petitioner was unable to meet the target. Therefore, the petitioner raised seedling 1,20,000, (One Lakh Twenty Thousand) in the months of September-October, 2011 (First phase) though the First phase should be raised within June 2011.

(iii) It is submitted that in the end of December, 2011, leaf sport disease (pests) affected cashew seedlings in Niamuhan Nursery. In spite of all efforts somehow the condition of cashew seedling was cured to some extent but not satisfactory. Therefore, the petitioner approached the higher authority by submitting a representation on 21.03.2012 bearing letter No.23 stating therein that the in spite of several efforts for prevention of pest in nursery, no result was fruitful.

(iv) It is further submitted that the Opposite Party No.1 along with the General Manager, Technical and Divisional Manager, Khurda inspected the spot on 21.07.2012. The Nursery alleged both General Manager, Technical and Divisional Manager, they are responsible for this damage due to inaction and negligence on their part.

(v) It is submitted that the Opposite Party No.1 along with the representation of the petitioner issued a show cause notice vide letter No.4479, dated 27.07.2012, mentioning huge loss of the corporation and due to the negligence on the part of petitioner, such damage has been caused. In response to said show cause, the petitioner submitted a reply to show cause vide his letter No.55 dated 31.07.2012, that there is no negligence on the part of the petitioner as he has tried his best to clear this problem and also approached the higher authority in time to remedy the problem, but no step has been taken by them.

(vi) It is submitted that the said Opposite Party No.1, without going through the reply of the Petitioner, in response to earlier show cause dated 27.07.2012, intentionally once again issued further show cause vide Letter No.5355, dated 04.10.2012 mentioning the same ground of short fall of cashew graft and negligence on the part of the Petitioner. In this connection, the Petitioner has filed reply to show cause dated 15.10.2012 mentioning details about the problem faced by him and step taken by him.

(vii) Thereafter, the Opposite Party No.2 issued recovery of outstanding vide letter No.280 dated 23.03.2013 against the Petitioner and directed him to deposit a sum of Rs.1,78,794/ within 31.03.2013. However, said letter was received by the Petitioner on 03.04.2013. Subsequent to which on 09.04.2013, the Petitioner filled a representation before the Opposite Parties 1 and 2 alleging that the punishment is disproportionate, discriminatory, arbitrary and without perusal of records.

(viii) Thereafter, the Petitioner has filed a Writ Petition bearing W.P.(C) No.18862 of 2013 before this Court, which was disposed of at the stage of admission on 17.01.2014 with a direction to the Opposite Party No.2 to consider the representation within four weeks from receipt of certified copy of that order.

(ix) Accordingly, the Petitioner has submitted certified copy of the order of this Court before the Opposite Party No.2. In response to the said order, the Opposite Party No.2 disposed of the same vide letter No.371/OSCDC dated 05.04.2014. Unlike the previous order vide letter No.280 dated 23rd March, 2013 issued by said Opposite Party No.2, this order dated 05.04.2014 is completely illegal, arbitrary, improper as such gross violation of natural justice. In this proceeding, the authority mechanically passed the recovery order in an illegal manner.

(x) Hence, this Writ Petition.

II. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTY :

3. Learned counsel for the Opposite Party Nos.1 and 2 earnestly made the following submissions in support of his contentions.

(i) It is submitted that the Petitioner who was the In-charge of Niamuhan Cashew Clonal Nursery under Khordha Division of the Corporation was given the target for production and supply of 1,50,000 numbers of plantable cashew grafts from the said nursery for the financial year 2012-13 (2012 planting). Accordingly, the Petitioner was provided a sum of Rs.9,81,876/- for production and supply of 1,50,000 numbers of plantable cashew grafts. The Petitioner could not even raise the required number of cashew seedlings to meet the target for production and supply of plantable cashew grafts. He supplied only 86,732 numbers of plantable cashew grafts during the year 2012-13 as against the target of 1,50,000 numbers, thereby leaving a short fall of 63,268 numbers of plantable cashew grafts due to his negligence the Corporation had to suffer financial losses.

(ii) An inquiry was conducted to that effect by the General Manager (Technical) of the Corporation and after reviewing the position of production of cashew grafts, it was found that although the funds were provided, the Petitioner had not properly utilized the same on purchase of agro inputs for proper growth of the cashew seedlings and grafts. An explanation was called for from the Petitioner after calculating the total cost of 86,732 numbers of cashew grafts supplied by the petitioner which was arrived at Rs.8,03,082/-. The Petitioner was intimated to deposit the balance outstanding amount of Rs.1,78,794/-. Without making deposit of the same, the Petitioner submitted a representation dated 09.04.2013 to waive of the same.

(iii) The Petitioner also filed a Writ Petition bearing W.P.(C) No.18862 of 2013 which was disposed of by the order dated 17.01.2014 with a direction to the Corporation to dispose of the representation of the Petitioner in accordance with law. After receipt of the copy of the order from this Court, the Corporation conducted a detailed inquiry through the General Manager, Technical along with the Opp. Party No.2 under the Opp. Party No.1 on 04.04.2014 in order to ascertain the factual position and it was found that there was negligence on the part of the Petitioner and the Petitioner was liable to deposit the balance outstanding amount of Rs.1,78,794/- against the cash advance and materials

received by him amounting to Rs.9,81,876/-.

(iv) The Petitioner also preferred an appeal before the higher authority. After examining the appeal petition with relevant official records and after hearing the Petitioner-in-person, the appellate authority observed that the Petitioner did not raise the required numbers of seedlings to meet the target for production and supply of 1,50,000 numbers of plantable cashew plants during 2012 planting season. It was further observed that he had not even applied the appropriate doses of pesticides and spray solutions over the disease affected seedlings in spite of recommendation of the Plant Protection Officer, Khordha, for which the affected seedlings could not revive, resulting in huge short fall in target for production and supply of cashew plants even though required funds were supplied to him, for which the Corporation had sustained huge financial loss. Accordingly, the appeal petition of the petitioner was disposed of and the Petitioner was intimated about the same vide letter dated 10.02.2014 to the Writ Petition.

(v) It is submitted that the Petitioner retired from the Corporation service on 31.03.2013. After his retirement, the Corporation sanctioned for payment of leave salary in lieu of unutilized earned leave for 300 days in favour of the Petitioner which was calculated to Rs.2,05,740/-. The Corporation after deducting a sum of Rs.1,78,794/- towards recovery of outstanding advance amount, the balance leave salary amount of Rs.26,946/- was paid to the Petitioner in shape of cheque vide the letter dated 17.04.2015. Hence, before receipt of the order dated 06.07.2015 from this Court, the Corporation had already recovered the amount of Rs.1,78,794/- from the retrial benefit of the Petitioner towards his outstanding advance.

(vi) It is submitted that the Petitioner, being an outsider, was initially appointed temporarily by the Opp. Party- Corporation vide order No.2040 dated 03.09.1981 to work as Plantation Assistant on ad hoc basis for a period of 45 days with effect from the date he reported for duty considering field requirement with the terms and conditions that the appointment was purely temporary and could be terminated at any time even before the completion of 45 days without assigning any reasons thereto as at Annexure-1 to the Writ Petition. Knowing fully well about the terms of appointment and after accepting the same, the petitioner joined in the service under the Corporation. Thereafter, taking field requirement into consideration, the petitioner was being engaged temporarily from time to time on ad hoc basis for specific period as per the above terms and conditions as and when required with breaks in service till 30.04.1995.

(vii) The service of the Petitioner till 30.04.1995 was not continuous in nature. However, the Corporation regularized the service of the petitioner in the post of Plantation Assistant along with similarly placed ad hoc employees with effect from 01.05.1995 vide Office Order No.5533 dated 01.05.1995 considering their past ad hoc services. Thereafter, the petitioner worked as a regular Plantation Assistant under the Corporation for the period from 01.05.1995 till the date of

his retirement on 31.03.2013.

(viii) It is submitted that due to inaction, negligence and carelessness committed by the Petitioner, the Corporation sustained huge financial loss for shortfall in supply of required numbers of cashew grafts from Niamuhan Nursery for 2012 planting season as against the target of 1,50,000 numbers. The Petitioner has taken various pleas in his representations only blaming others to cover up his lapses.

(ix) Learned counsel for the Opposite Part, accordingly, prays for dismissal of this Writ Petition.

III. COURT'S REASONING AND ANALYSIS:

4. The Petitioner, being the In-charge of Niamuhan Cashew Clonal Nursery under Khordha Division of the Corporation, was given a target for production and supply of 1,50,000 numbers of plantable cashew grafts from the said nursery for the year 2012-13 (2012 planting). The Opp. Party No.2 had supplied required polythene, cashew seeds, funds and materials to the petitioner in time as per his requisitions for production and supply of 1,50,000 numbers of plantable cashew grafts during the year 2012-13 (2012 planting).

5. Accordingly, the Petitioner received both cash and materials amounting to a total of Rs.9,81,876/- from the office of the Divisional Manager, Khordha (Opp. Party No.2) in different phases from the year 2011 till the end of July, 2012 for production and supply of 1,50,000 numbers of plantable cashew grafts for the year 2012-13 (2012 planting). In spite of that, the Petitioner could not even raise required numbers of cashew seedlings to meet the target for production and supply of 1,50,000 numbers of plantable cashew grafts and he supplied only 86,732 nos. of plantable cashew grafts during the year 2012-13 (2012 planting), thereby a shortfall of 63,268 numbers of plantable cashew grafts occurred due to his negligence resulting in financial loss to the Corporation.

6. After getting information from the Petitioner, the Opp. Party No.2 personally contacted the Plant protection Officer, Khordha regarding pest attack in the Nursery. In response to the request of the Opp. Party No.2, the Plant Protection Officer, Khordha verified the spot and prescribed the required dose of medicine to be applied for eradication of the pest attack. All assistance was also given to him from the Plant Protection Officer to protect the plants from pests.

7. The soil testing analysis reports showed that the pot mixture used by the Petitioner for production of grafts of very was low standard which resulted in mortality of seedlings as well as cashew grafts. Further, the Petitioner utilized spray solution of Chemazole and Streptomycin at a lower dose which is far less than the prescribed dose, for which the affected cashew seedlings and grafts could not be recouped as per the findings of the inquiry conducted by the General Manager, Technical of the Corporation along with the Opp. Party No.2 on 04.04.2014.

8. The Managing Director and General Manager, Technical of the Opp. Party No.1-Corporation had inspected the said Niamuhan Nursery on dated 21.07.2012 and reviewed the position of production of cashew grafts for 2012 planting year as well as maintenance and care of the cashew grafts and seedlings. It was found that although funds were provided, the petitioner had not properly utilized the same on purchase of agro inputs for proper growth of the grafts. This shows his insincerity in his work.

9. On seeing the poor position, the Managing Director expressed her displeasure over the gross negligence in duty on the part of the Petitioner and financial loss of the Corporation and called for explanation from the Petitioner vide confidential letter No.4479 dated 27.07.2012 which is annexed to the Writ Petition. It is clear that the Petitioner had failed to take proper care and caution in this case in cashew grafting and seedlings in spite of all the monetary and technical assistance were provided to him. It shows his gross negligence in duty which caused financial loss to the Corporation.

10. In view of the aforesaid discussion, this Court is not inclined to entertain the prayer of the Petitioner.

11. This Writ Petition is dismissed, accordingly.

12. Interim order, if any, passed earlier stands vacated.

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