
(1999) 05 OHC CK 0020

In the Orissa High Court

Case No : Original Jurisdiction Case No. 6086 of 1998

Parsuram Bhakta

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 04-05-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (1999) 16 OCR 659

Hon'ble Judges : Pradipta Ray, C.J.; A. Pasayat, Acting C.J.

Bench : Division Bench

Advocate : D.P. Sarangi, for the Appellant; A.S. Naidu and R.K. Mohanty, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Pradipta Ray, C.J.—Petitioner, an unemployed youth belonging to Scheduled Caste, who claims to be a public spirited person has filed this purported public interest writ application for directing the Central Bureau of Investigation (hereinafter referred to as "C.B.I.") to enquire and investigate into the allegations against opp. party No. 4 who served as Collector -cum-District Magistrate, Malkangiri from February 2, 1992 to April 24, 1997.

2. In his application the Petitioner has made certain allegations about the integrity and personal moral character of opp. party No. 4 and alleged illegal activities in giving appointments to various public posts. It has also been alleged that opp. party No. 4 had illicit relationship with a lady who ultimately committed suicide to save herself from ignominy. It is alleged that the then Superintendent of Police wanted to arrest opp. party No. 4 in connection with the said incident of suicide, but ultimately opp. party No. 4 managed to entangle the husband of that lady in a criminal case for murdering his wife. The Petitioner has also sought to connect the alleged illegal appointments with alleged immoral character of opp. party No. 4.

3. Although Petitioner has made such serious allegations against the personal character of opp. party No. 4, no material has been produced in support thereof. There is nothing to indicate that anybody else has ever lodged any complaint before any authority against opp. party No. 4. If really opp. party No. 4 would have committed the alleged acts in a habitual and persistent manner, there would have been at least some complaint from any of the victims.

4. As regards the alleged suicide as mentioned in the application, it is seen that F.I.R. was lodged at Mudulipada police station on 16.4.1995 u/s 302, I.P.C. corresponding to G.R. Case No. 112 of 1995. Father of the deceased Adivari Toki was the informant. The husband of the deceased was arrayed as the accused. There is not even a whisper about involvement of opp. party No. 4. It is pointed out by the learned Counsel for opposite parties that in the mean time the trial is over and the accused has been acquitted. Learned Counsel for Petitioner has stated that true picture was not brought out in trial and that is how there has been acquittal. In a criminal case State is the prosecutor which acts on the basis of information given about commission of a cognizable offence. When the informant thought that somebody was the accused and on that basis law was set into motion and trial has been held, it is not open to the third party to say that true picture was not brought on record. The plea that the informant was gained over does not have any foundation, and therefore, the stand of the Petitioner in that regard fails. Moreover, in compliance with the direction of this Court the superintendent of Police, Malkangiri submitted a report on June 20, 1998 before the collector-cum-District Magistrate, Malkangiri in which it has been reported that the records in the office of the superintendent of police did not show that there was any proposal to arrest opposite party No. 4 on any allegation.

5. General allegations have been made that the opp. party No. 4 made appointments in the junior grade of subordinate Tribal Education Service without complying with the provisions of the Orissa Subordinate Tribal Welfare Education (Recruitment and Conditions of Service) Rules, 1993 (hereinafter referred to as the "Recruitment Rules"). By way of examples it has been stated that opp. party No. 4 opened two tribal High Schools- one at Panaskut and another at Sikhapalli without any Government sanction and appointed teachers of his choice ignoring the recruitment rules. It has been further alleged that over-aged and under-aged persons were appointed without holding any selection test or interview and wherever selection committee was constituted the same was not in accordance with the Recruitment Rules. A list of persons appointed as Tribal Schools Teachers by opp. party No. 4 with particulars regarding their qualification, date of birth and date of appointment and place of posting has been annexed as Annexure-I.

6. The State Government has filed a counter affidavit denying the allegations of illegality or irregularity as mentioned in the writ petition. In paragraph 6 of the counter it has been stated that the proposal of upgradation of Sikhapalli Ashram School in Korakonda Block and Panaskut Ashram School in Kudumuluguma Block

was recommended by the District Planning and Development Board, Malkangiri in its meeting held on February 7, 1994. The said meeting of the District Planning and Development Board was presided over by the Revenue Divisional Commissioner, Berhampur.

Recommendations were sent to the State Government for approval. With the approval of the District Planning and Development Board, opp. party No. 4 directed to start two sessions in those Schools in anticipation of Govt. approval. However, the State Govt. ultimately did not approve the proposal for upgradation and as per Govt. Instruction as communicated by letter dated August 1, 1996 upgradation was discontinued and the students admitted in the upgraded classes are diverted to existing High Schools.

7. In paragraph 8 of the counter affidavit it has been denied that nay over-aged or under-aged persons was appointed in the Subordinate Tribal Education Service in the district. It has been pointed out that in case of women candidates the recruitment rules contain a provision for relaxation of age upto five years, and as such there was no illegality in appointing Miss. B. Acharya who was over 32 years of age at the time of appointment. Cases of persons mentioned in the list vide Annexure-1 have been specifically dealt with wherever necessary to point out that ad-hoc appointments were given on the basis of the recommendation of the District Selection Committee which met from time to time between July, 1994 and December, 1995. It has been pointed out that composition of Selection Committee has been prescribed in the Rules and as such the Collector of the District had nothing to do with the constitution of the selection Committee.

8. Regarding appointment to the post of Junior Clerks in the district detailed facts have been disclosed in paragraphs 14 to 26 of the counter. In paragraph 27 of the counter affidavit of the State it has been stated that appointments given to 39 persons in different categories of posts in junior grade of Tribal Education Service between April 15 and 23 of 1997 have been found to be irregular on the ground of non-compliance with the recruitment rules and those appointments were cancelled. Against such cancellation 23 persons have already filed separate applications before the Orissa Administrative Tribunal and those cases are pending there.

9. Opp. party No. 4 has filed a separate counter affidavit. In his counter he has given a detailed account of the difficulties he had to face while administering a newly created backward tribal district which was at that point of time practically without any infrastructure. He has referred to the appreciations received by him from various organisations and personalities working for welfare of the backward communities in those areas. Even UNICEF recorded its appreciation for the efforts made by opp. party No. 4. Copies of several such written appreciations have been annexed to the counter. Regarding the appointments which were cancelled by his successor-Collector, opp. party No. 4, has claimed that all those appointments were made by the District Selection Committee in its meeting held on April 10, 1997 after observing Rules 5,6 and 7 of the Recruitment Rules, 1993.

10. It appears that cases are pending before the Orissa Administrative Tribunal and in High Court regarding those appointments which have been cancelled. If in any of those cases, any conclusion has been arrived at about opp. party No. 4 having committed any illegality for personal gain or with any oblique motive, same can be properly dealt with. At the present juncture, it has to be noticed that there is no material brought on record except vague allegations that opposite party No. 4 was actuated with oblique motives. Therefore, it is not necessary to examine other aspects in this writ application.

11. In pursuance of this Court's order dated May 1, 1998 the Collector Malkangiri conducted an enquiry into the matter and submitted a confidential detailed report to this Court. The said report reveals that most of the allegations contained in the application are without any substance. The Petitioner has gone to the extent of alleging that because of amazing habit opp. party No. 4 did not reside with his family while he was at Malkangiri. According to the Collector's report, he enquired from the staff who were working in the collector's residence at the relevant point of time and found that such allegation is wholly imaginary and the wife of opp. party No. 4 was all along staying with him. According to Collector's report not a single evidence was available that opp. party No. 4 committed or attempted to commit anything amounting to misbehaviour towards any female employee. The Collector in his report has dealt with each of the allegations made by the Petitioner in his application and found those to be totally untrue.

12. Considering the writ petition, counter, rejoinder and the report of the Collector submitted before this Court we do not find anything which even remotely show that opp. party No. 4 did anything which even remotely show that opp. party No. 4 did anything for his personal gain or with any motive. The State Govt. in its affidavit has rather acclaimed the role played by opp. party No. 4 in undertaking welfare measures in underdeveloped district like Malkangiri in order to combat poverty and ignorance. It has been expressly stated in Para 28 of the counter affidavit:

opp. party No. 4 has a clean service track record and is known to be an honest and efficient officer. There has been no blemish in his service career. On the contrary, opp. party No. 4 has received laurels for his commendable job.

Accordingly we do not find any such substance in the allegations can raise it to the domain of public interest litigation warranting any direction or interference of this Court.

13. The writ application is thus dismissed. No costs.

A. Pasayat, A.C.J.

14. I agree.