
(2007) 11 OHC CK 0017
In the Orissa High Court

Prasant Kumar Lenka

APPELLANT

Vs

Orissa Small Industries Corporation Ltd. and Others

RESPONDENT

Date of Decision : 14-11-2007

Acts Referred:

Citation : (2008) 2 LLJ 879 : (2008) 1 OLR 296 Supp

Hon'ble Judges : B.P. Das, J;A.K. Samantaray, J

Bench : Division Bench

Judgement

B.P. Das, J.—In these three writ applications the facts and the relief sought for being same and similar, they were heard together and are being disposed of by this common order. The challenge in these writ applications is to the order dated May 16, 2001 passed by the Managing Director, Orissa Small Industries Corporation Ltd. (OSIC), O.P. 2, so far as it relates to the reversion of the petitioners, then working in the Head office/Raw Material Depots of the OSIC, to their parent organisation, i.e. Orissa Pump and Engineering Company Ltd. (OPEC).

In the aforesaid impugned order dated May 16, 2001, the name of the petitioner in, O.J.C. No. 6878/2001, who was working as Senior Assistant, finds place at serial No. 7 whereas the names of the petitioner in O.J.C. Nos. 6887 and 6890 of 2001, who were working as Helpers, find place at serial Nos. 8 and 9-respectively.

2. The brief facts necessary for disposal of these writ applications are as follows:

The petitioner in O.J.C. No. 6878/2001-was appointed on June 20, 1987 to work as Jr. Assistant and the petitioners in O.J.C. Nos. 6887 and 6890 of 2001 were appointed to work as N.M.R. employees under the Orissa Pump and Engineering Company Ltd. (OPEC), which was a wholly owned subsidiary unit of OSIC. Thereafter, the services of all the petitioners were regularized. They were relieved from their duties and directed to report for duties in the OSIC and accordingly they joined and worked in different capacities.

It is further stated that the OSIC in its 113th Board Meeting held on May 18,

1996 took a decision with regard to the sanctioned posts available at OSIC and accordingly prepared a list showing sanctioned posts available in different cadres of OSIC. It was also decided that the said sanctioned posts would include all posts comprising the OSIC cadre, and those posts which had been filled up for the present by the officers on deputation from the Government as well as from other manufacturing units. While the petitioners were so working in the OSIC, the OSIC decided to sell and transfer the unit, namely, OPEC, admittedly its wholly owned subsidiary, in which the petitioners were initially engaged, to some private entrepreneurs. An agreement to that effect was executed between the private entrepreneurs, namely, M.K. Agarwal and P.K. Mohanty, and the OSIC on October 21, 1998 (Annexure-12 to O.J.C. 6878/2001 and Annexure-6 to O.J.C. Nos. 6887 and 6890 of 2001) and as per the said agreement, the OSIC transferred all the shares held by it in OPEC to the said private entrepreneurs. In this manner the OPEC went to the hands of the private entrepreneurs. According to the petitioners, after the transfer of the said unit there was labour unrest in the OPEC and after negotiation with the new management, it was agreed that all the employees of OPEC would be allowed to continue under the new management and accordingly, a notice was published in the local Oriya daily "The Samaj" calling upon the employees to join the work by November 21, 1998 or else they would be deemed to have tendered their resignation voluntarily. Again another notice dated November 10, 1999 was published in the Oriya daily "The Samaj" calling upon the employees, who had not joined, to join in work by January 12, 1999 failing which new employees would be appointed in their place and in future no claim of the old employees would be entertained. But so far as the petitioners are concerned, as they were working in the OSIC, they were neither asked to go back to OPEC nor were they relieved from their duties because of the reason that it was known to the management of OSIC that by then the petitioners had become fulltime regular employees of the OSIC. This claim of the petitioners gets support from the EPF annual statement for the year 1999-2000, wherein the petitioner in O.J.C. No. 6878/2001 was shown as the employee under OSIC. Copy of the said statement is annexed as Annexure-8 in O.J.C. 6878/2001.

The petitioner in O.J.C. No. 6878/2001 while working as Senior Assistant in the OSIC got two increments in the year 2000. It is alleged that the petitioner asked for a loan of Rs. 2. lakhs for the treatment of his wife, who was suffering from chronic Myeloid Leukemia and the Board of Directors of the OSIC sanctioned the same. But at this juncture the petitioner received the impugned order dated May 16, 2001. It is stated by the learned Counsel for the petitioners that after transfer to private entrepreneurs, the OPEC did not remain as a subsidiary of OSIC and here the OSIC cannot direct the petitioners to go to join the private company and, according to the petitioners, because the management of OSIC even after execution of the agreement for transfer of the unit, allowed the petitioners to work in the OSIC because the petitioners belonged to the cadre of the OSIC. Therefore, according to the petitioners, there was no occasion for the

OSIC to revert the regular employees of OSIC and direct them to join in a purely private organisation. It is further argued that as per the agreement, the new management of OPEC agreed to employ all the employees, who were on the rolls of the Undertakings on the date of transfer and the petitioners were never in the rolls of the OPEC. In addition to that, after the impugned order of reversion was passed, the management of OPEC by letter dated May 22, 2001 intimated that OSIC expressing its unwillingness to accommodate the petitioners because of the financial difficulties faced by it.

3. Separate counter affidavits have been filed on behalf of the O.P.-OSIC in the aforesaid cases taking a stand that the OPEC was a subsidiary company of OSIC and as per the policy decision of the Government, the Board of Directors of OSIC decided for disinvestment of shares whereafter the management of OPEC was transferred to the private entrepreneurs/promoters on execution of the agreement dated October 21, 1998 and in view of such agreement for transfer of management of OPEC, there is no other way out for the petitioners than to join the OSIC. It is stated that the petitioners were never regularized in the OSIC nor is there anything to show that they were employed in the OSIC. It is further stated that it was agreed by the OPEC that the services of all the personnel borne on the rolls of the said OPEC on the date of transfer shall not be disturbed by such transfer, and the terms and conditions of services applicable to all such personnel after transfer shall not in any way be less favourable to such personnel than those applicable to them immediately before the transfer. In view of this, the petitioners ought to have joined the OPEC and despite issuance of the notice dated November 21, 1998 in the Oriya daily "The Samaj", it was the petitioners, who failed to join the OPEC, It is further contended that the petitioners were appointed in the OPEC and their names were on the rolls of the OPEC on the date of transfer of the management.

4. During the course of hearing, by order of this Court dated July 2, 2007, the OPEC was impleaded as O.P. 4 and notice was issued to it. It appeared through the counsel and filed counter affidavit taking a stand that the petitioners did not respond to the notice issued by the OPEC in the Oriya daily "The Samaj" and at that point of time they continued under the OSIC, O.P. 1, for which the OPEC, O.P. 4 was not in a position to accept the petitioners in its establishment.

5. In the agreement dated October 21, 1998 executed between the transferor-OSIC and transferees, M.K. Agarawal and P.K. Mohahty, for transfer of OPEC, the transferees agreed under Clause -11 that the services of all personnel borne on the rolls of the said OPEC shall not be disturbed by such transfer. It is an admitted fact that the petitioners on that date were working in the OSIC and there is nothing to show that any effort on the part of the OSIC was made to relieve the petitioners to join OSIC. If it desired to revert them, it could not have waited till May 16, 2001 to pass the order of reversion. Admittedly, the petitioners were the employees of a wholly owned subsidiary company of OSIC and OSIC had relationship of master and servant with them and control over

their services. The management of OSIC by virtue of such control had brought the petitioners to the OSIC and allowed them to work there. After the subsidiary company was transferred or privatized, the OSIC on its own volition allowed the petitioners to continue under it for about three years after such transfer of the management of OPEC to private entrepreneurs. As the State Government, OSIC and OPEC are the major parties to the present dispute, this Court by order dated July 2, 2007 passed in O. J.C. No. 6878/2001 directed to take a decision regarding the future of the petitioners services considering the fact that the OSIC allowed the petitioners to work under them for about three years even after OPEC was transferred to a private body and the reluctance of the OPEC to accept the petitioners.

Pursuant to the aforesaid order (sic) July 2, 2007, the Managing Director, OSIC filed an affidavit on November 12, 2007. The deponent stated that when he contacted the Managing Director, OPEC, to resolve the issue, the latter by letter dated August 21, 2007 (Annexure-D) intimated that since the matter was subjudice in this Court, he did not feel it proper to give any view in the matter. Thereafter, the Managing Director, OSIC again requested the Government vide letter dated September 28, 2007 (Annexure E) to direct OPEC to accept the services of the petitioners. The General Manager of OSIC requested the Government in Industries Department vide letter dated November 8, 2007 (Annexure-F) to intervene in the matter, direct OPEC to accept the services of the petitioners and/or pass suitable instructions to enable OSIC to submit the same before this Court. By letter dated November 8, 2007 the Deputy Secretary to Government, Industries Department, intimated the Managing Director, OSIC that the prayer of the petitioners for employment in OSIC being the internal matter of the OSIC, appropriate decision in that regard should be taken by the OSIC. It is further indicated therein that the aforesaid fact was clarified to the advocate General vide letter No. 24165 dated November 15, 2001 under intimation to the OSIC. The Deputy Secretary also requested the Managing Director to dispose of the prayer of the petitioner appropriately in pursuance of the observations made by this Court in the order dated July 2, 2007 in O.J.C. No. 6878/2001.

6. From the aforesaid, it appears that though the OSIC in its counter affidavit refuted the claim of the petitioners, in terms of the order of this Court dated July 2, 2007, its Managing Director has made an effort to resolve the issue and we appreciate the effort made by the Managing Director. But fact remains that neither the Government nor the management of OPEC has come forward to co-operate with the OSIC to resolve the issue. In these facts and circumstances of the case, the petitioners cannot be left in high and dry. The petitioners have not received their salary since the date the impugned order of reversion dated May 16, 2001 was passed. This writ petition was filed in 2001 and in the meantime, six years have passed. Not a single document has been produced before this Court to show that after the agreement was executed, the petitioners at any point of time were relieved or directed to work in OPEC. The petitioners were

getting their salary from the OSIC and were enjoying the benefits like other employees of the OSIC. I They are, in fact, the employees of the OSIC as they all along performed their duties under the OSIC bereft of the fact that they were earlier engaged in the OPEC when it was a wholly owned subsidiary company of OSIC.

7. In these circumstances, looking at the peculiar facts and the situation in which the petitioners are now placed, we allow these writ applications, quash the impugned order dated May 16, 2001 passed by the Managing Director, Orissa Small Industries Corporation Ltd., so far as it relates to the petitioners, and direct the OSIC to reinstate the petitioners in their respective posts within a period of one month from the date of communication of this order.

8. So far as the claim of the petitioners for back wages is concerned, Mr. G.A.R. Dora, learned senior counsel for the OSIC, submits that as the petitioners have not worked, they are not entitled to back wages.

9. The facts narrated in these writ petitions as well as the counter affidavits make it crystal clear that non-joining of the petitioners in their duties has been under compelling circumstances and no laches for that can be attributed to them. The petitioners are jobless without any fault of theirs. But at the same time, the submission of Mr. G.A.R. Dora, learned senior counsel for the OSIC is that the Corporation is passing through very bad financial phase, which cannot be overlooked. Considering the rival contentions, in our considered opinion, we direct, let the Corporation within three months after joining of the petitioners, calculate their entitlement from the date of their disengagement till the date of their joining and pay 40% of their total entitlement in six bimonthly instalments. We make it very clear that we have allowed these I writ applications considering the peculiar nature of the case, which may not be precedent in other cases.