
(1995) 09 OHC CK 0017

In the Orissa High Court

Case No : O.J.C. No. 3171 of 3859 of 1995

Promod Kumar Patra and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 19-09-1995

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 1996 Ori 66

Hon'ble Judges : D.P. Mohapatra, C.J;R.K. Dash, J

Bench : Division Bench

Advocate : S. Mehera, S.N. Mohanty, D.B. Mishra and J.C. Mohanty, L. Mohapatra, B.K. Nayak, S.C. Mohanty, A.R. Mishra and D.K. Mishra, for the Appellant; S.D. Das, S.K. Samantaray, A.K. Chodwdhury, L. Samantaray, B.U. Udgata and A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

R.K. Dash, J.—The petitioners in both the above writ applications are real brothers. Their main grievance is against the opposite party No. 5 in whose favour Government has accorded permission for opening a day and night medical store in the campus of U.C.P.H.C., Khallikote. Since both the cases are almost similar, although reliefs sought for are different, they were heard analogously and this common judgment is passed which shall govern both the cases.

2. The petitioner in O.J.C. No. 3171 of 1995 assails the order of the Under Secretary to Government of- Orissa in Health and Family Welfare Department (Annexure-B) selecting opposite party No. 6 for opening of a medical store in the campus of U.C.P.H.C., Khallikote in preference to the petitioner. To put it shortly, the case of the petitioner is that the Chief District Medical Officer (C.D.M.O.), Ganjam issued an advertisement dated 1-10-94, Annexure-1 inviting applications for opening a day and night medical store inside the hospital campus of U.C.P.H.C., Khallikote. Pursuant to the said advertisement the petitioner submitted application, Annexure-2 stating that he being a registered pharmacist

has past experience in dealing in medicine. Certain criteria are prescribed in the Government Orders published from time to time to select persons for opening medical stores in the campus of the hospitals in the State; the first Government Order being dated 10-7-91 (Annexure-A), the next one being dated 13-5-93 (Annexure-6) and the last one being dated 3-8-93 (Annexure-7). As per the prescribed criteria he comes under the first category for being selected in preference to opposite party No. 5, but in spite of that Government illegally selected opposite party No. 5 and issued order in his favour vide Annexure-8. Challenging such action of the Government the petitioner has prayed to quash Annexure-8 and to declare him to have been selected for opening the medical store in the campus of the aforesaid P.H.C.

3. Opposite party No. 5, refuting most of the allegations has asserted that pursuant to the advertisement, Annexure-1 he being an unemployed youth and having sufficient experience of running a medicine shop applied to open a day & night medical store in the campus of U.C.P.H.C., Khallikote after obtaining consent from two qualified pharmacists to engage them in the work. His further case is that petitioner's elder brother owns a medicine shop in front of the hospital and to have a monopoly in medicine business, petitioner applied to the authority to permit him to open day and night medical store inside the hospital campus. However, Government on consideration of the application in the light of various Orders selected opposite party No. 8 and accordingly passed orders vide Annexure-8 whereafter opposite party No. 6 having executed necessary agreement constructed a shop-room by investing a sum of Rs. 60,000/ -. He also applied to the Drugs Controller and obtained permission as required under law. In these circumstances, he urges that the writ application being devoid of merit should be dismissed in limine.

4. Grant of permission to open day and night medical store in the hospital campus is the administrative function of the Government and any interference by this Court in exercise of writ jurisdiction under Article 226 of the Constitution is uncalled for in absence of any material to show that there has been any patent illegality or arbitrariness or unfairness or lack of bona fide in according such permission. In the present case, admittedly there are three Government Orders issued from time to time laying down the criteria for selection of persons to open day and night medical store. The first Government Order is dated 10-7-91, Annexure-8. The relevant paragraph 4 of the said Order laying down the criteria is as under :

"i) The applicant should be a registered pharmacist or should employ one or more registered pharmacists on full-time basis. Those applicants who are registered Pharmacists themselves will be given preference over others who employ pharmacists.

ii) Persons who have previous experience of running medicine shop will be given preference, if they can furnish documentary evidence to that effect. However they will get lower priority vis-a-vis applicants who are registered pharmacists.

iii) Preference will be given to S.C./ S.T./P.H. persons. However, they will get lower preference as compared to applicants who are registered pharmacists and have experience of running a medical store.

iv) All other things being equal, older persons who do not have possibility of employment in Government (since they have crossed the maximum age-limit) will be given preference."

The next circular is Annexure-6 dated 12-6-93 in which there has been some changes and for better appreciation, the same are reproduced hereunder:--

"i) Any person having the requisite qualification may apply for running a medical Store in Government hospital.

ii) A person to be considered eligible for the purpose shall preferably be a registered pharmacist either with a degree or diploma in pharmacy. But a person who can engage a pharmacist irrespective of whether he himself is a pharmacist or not may also be considered.

iii) A person having previous experience of running a medical store shall be given preference if he can furnish documents in support of that. But he will get lower priority vis-a-vis applicant who is a registered pharmacist.

iv) All other things being equal persons who have crossed the age limit for entry into Government service shall be given preference."

The third Government Order is Annexure-7 dated 26-5-93. Paragraph 2 of the said Order which substitutes paragraph 5 of Annexure-6 runs thus:--

"i) Any person having the requisite qualification may apply for running a medical store in Government hospital.

ii) A person to be considered eligible for the purpose shall be a registered pharmacist either with a degree or diploma in pharmacy. But a person who can engage a pharmacist irrespective of whether he himself is a pharmacist or not may be considered.

iii) An unemployed person having previous experience of running a medical store shall be given preference."

5. On a reading of Clause (iii) to paragraph 2 of Annexure-5 it transpires that any person having previous experience of running a medical store shall be given preference, if he can furnish documents in support thereof, but he will get less priority vis-a-vis applicant who is a registered pharmacist. This condition, however, is absent in Annexure-7. It is stated therein that an unemployed person having previous experience of running medicine shop shall be given preference. While issuing advertisement dated 1-10-94, Annexure-1 the Medical Officer in charge of U.C.P.H.C., Khallikote laid down the criteria as mentioned in the latest Government Order, Annexure-7. It may be reiterated that the petitioner claimed to have preference over opposite party No. 6 since he is a registered pharmacist

and has previous experience. As against that, opposite party No. 5 asserted that he is an unemployed youth having previous experience in running a medical store and further he has obtained consent of two persons to engage them as pharmacists. In support of his claim he attached all the necessary documents including his experience certificate with the application.

6. The petitioner relies upon certain documents in support of his claim. Annexure-2 is the certificate issued by the Orissa State Pharmacy Council and Annexure-4 is the experience certificate showing his previous experience in running medical store. As provided in the Government Order, Annexure-7, the petitioner satisfies Clause (ii) of paragraph 2. So far as Clause (iii) is concerned, his application to the Medical Officer (Annexure-2) indicates that he claimed preference as an unemployed youth, but curiously enough, he has not advanced his claim as such in the writ application. Even accepting for the moment that he is an unemployed registered pharmacist having previous experience, but then he cannot be said to have preference over opposite party No. 5. It may be recalled that opposite party No. 5 has specifically urged in his counter-affidavit that he is an unemployed youth having previous experience in running a medical store and further he has obtained consent from two persons for being engaged as pharmacists. His claim is, therefore, covered by both the Clauses (ii) and (iii). Since the petitioner's claim does not stand on a better footing, in other words, when both petitioner and opposite party No. 5 are equally eligible to be considered, exercise of discretion by the authority in favour of the latter cannot be said to be illegal and arbitrary.

7. Having given our anxious consideration to the respective cases of the parties and keeping in view the guidelines fixed by the Government, we are of the considered view that selection of opposite party No. 8 is in accord with the Government Order. Annexure-7 which needs no interference by this Court in exercise of writ jurisdiction.

8. Coming to O.J.C. No. 0859 of 1995 the petitioner therein is no other than the brother of the petitioner in O.J.C. No. 3171 of 1995. His grievance, in short, is that the opposite party No. 5 on being selected to open the medical store in question started constructing shop room in front of the out-door leaving hardly any space for entry into the out-door, If the medicine shop is opened in such place, it would cause serious inconvenience to patients and their attendants, specially in the maternity ward. This fact was brought to the notice of the Government whereupon the Under Secretary to Government of Orissa, Health and Family Welfare Department under order dated 22-5-95, Annexure-1 intimated the Chief District Medical Officer, Ganjam to intimate the opposite party No. 6 to take up construction elsewhere in the medical campus without causing inconvenience to the public and in view of such direction, the petitioner urges that necessary orders be passed directing opposite party No. 5, the Medical Officer of U.C.P.H.C. to comply with the same.

9. Counter-affidavit has been filed by opposite party No. 3 refuting the

petitioner's allegations made in the writ a petition. His positive assertion is that being a Medical Officer he had taken into account the convenience of the patients and selected the site and allotted the same to opposite party No. 5. Accordingly the opposite party No. 5 took up construction and by the time the Government instruction vide Annexure-1 was received, construction had been completed. In this view of the matter, opposite party No. 3 contends that the writ petition being devoid of merit should be dismissed.

10. On a careful scrutiny of the averments made in the writ application and the counter-affidavit, we find no reason to interfere with the administrative action of the Medical Officer selecting a place for opening day & night medical store by opposite party No. 6.

11. In the result, both the writ applications being devoid of merit, are dismissed. No costs.

D.P. Mohapatra, A.C.J.

12. I agree.