
(2016) 08 OHC CK 0014
In the Orissa High Court
Case No : O.J.C. No. 6755 of 2001

Rajendra Prasad Das

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 08-08-2016

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2016) 122 CutLT 1016

Hon'ble Judges : Vineet Saran, CJ. and Dr. B.R. Sarangi, J.

Bench : Division Bench

Advocate : M/s. Ms. M. Ghose, N.S. Ghose, P.K. Tripathy and A. Mohapatra, Advocates, for the Petitioners; Mr. P.K. Muduli, ASC, for the Opposite Party Nos. 1 and 3

Final Decision : Partly Allowed

Judgement

Dr. B.R. Sarangi, J. - The petitioners are said to be the residents of Polsara in the district of Ganjam. It is asserted by them that they as well as most of their villagers are very poor, innocent and live on cultivation and are not affluent enough to take medical aid and purchase medicine at the time of their ailment. Having realized the need of a Homeopathic and an Ayurvedic Dispensary in Polsara, "Jagarana" a social activist group started a mass agitation in the year 1995 demanding opening of such Dispensary at Polsara N.A.C. Their demand for opening of such Dispensary was genuine one being in public interest. The N.A.C. passed a resolution on 06.02.1995 resolving unanimously to open a Homeopathic Dispensary at N. Gopinathpur, which is under Polsara N.A.C. area and authorized the Chairman of the N.A.C. to appoint a Homeopathic doctor on a monthly remuneration of Rs.500/- per month. Such decision could not be materialized instantly, as no suitable doctor came forward to accept the offer at such a low remuneration. However, a local Homeopathic Doctor, namely; Dr. Rajendra Prasad Das agreed to serve the people of the area and, accordingly, the N.A.C. in Its meeting dated 28.05.1995 decided to open the Dispensary on 01.08.1995.

The Chairman of the N.A.C. issued the office Order on 28.07.1995 and Dr. Rajendra Prasad Das joined his duty on 01.08.1995. The Executive Officer, Polsara N.A.C. sent the proposal for opening the Homeopathic Dispensary to the Director of Municipal Administration on 01.08.1995 along with resolution dated 26.09.1995. The Government of Orissa in Housing and urban Development Department? sought for the recommendation of the Director, Indian Medicines and Homeopathic, Orissa, Bhubaneswar for sanction and creation of post of Homeopathic medical officer under Polsara N.A.C. vide its communication dated 22.11.1995. The Executive Officer, Polsara N.A.C. again requested the Director of Municipal Administration, Bhubaneswar on 20.07.1996 for inclusion of the post of Homeopathic Medical Officer in L.F.S. Cadre. Due to poor income of the N.A.C. and apathetic attitude of the State Government with regard to the sanction of post or inclusion of post in L.F.S. Cadre, Polsara N.A.C. was constrained to close the Dispensary on 09.06.1997. The Director, Indian Medicines & Homeopathy, Orissa vide its letter No.3241 dated 16.02.1996 had recommended for opening a Homeopathic Dispensary in Polsara, consequent to which the Government of Orissa in its Housing and Urban Development Department accorded Ex-Post facto approval for opening of such a Dispensary vide letter No.41794 dated 31.12.1997 subject to condition that a doctor having requisite qualification should be appointed on the consolidated pay of Rs.1000/- per month and that the entire expenditure shall be borne by the N.A.C. till at best the regular post in the approved cadre is created. The State Government in its letter dated 04.05.1998 called upon the Executive Officer, Polsara N.A.C. to furnish the financial position, i.e., the income and expenditure statement for taking further action to create a post of Homeopathic doctor in the N.A.C. In response to the same, the Executive Officer submitted income and expenditure statement of preceding three years of Polsara N.A.C. on 28.01.2000. In spite of the letter Issued by the Government of Orissa dated 31.12.1997, since Polsara N.A.C. did not open the Homeopathic Dispensary, a reminder was issued. Due to inaction of the authority, finding no other way out, this writ application has been filed.

2. By order dated 02.02.2002, this Court, while Issuing notice to the opposite parties, directed to serve two extra copies on the State Counsel appearing for opposite parties 1. and 3 and send notice to opposite party no.2. Accordingly, requisites on being filed, notice was sent to opposite party no.2 fixing 03.01.2003 for appearance and show cause. Though the said notice was made sufficient, but none had entered appearance, whereas opposite parties 1 and 3 are represented by the State Counsel.

3. Ms. Mira Ghose, learned counsel for the petitioners urged before this Court that as there was requirement of a Homeopathic Dispensary, opposite party no.2 passed resolution and recommended the same for creation of posts to the Government. In response to the same, the Housing and Urban Development Department issued letter on 31.12.1997 and subsequently also issued reminder on 04.05.1998. In spite of steps being taken by opposite parties 1 and 3 with regard to sanction and creation of post of Homeopathy Doctor, till date no action

has been taken by the opposite parties. Consequentially, the people of the locality are deprived of health facilities, which they are entitled to.

4. Mr. P.K. Muduli, learned Addl. Standing Counsel for the State submitted that, when a recommendation was received from the Notified Area Council, Polsara, the Government in its wisdom had already considered the same and passed the order on 31.12.1997 permitting the NAC to open the Dispensary and allowing the Homeopathic Medical Officer to join the post with consolidated pay of Rs.1000/- till a regular post is approved and created after improvement of the financial condition of the NAC. Though reminders have been issued, till date there is inaction on the part of the authority and, as such," there is no negligence on the part of the State authority to open the Dispensary for the interest of the public.

5. Having heard learned counsel for the parties, after going through the records, it appears that no counter affidavit is forthcoming from the side of the opposite parties. But, on the basis of the letters dated 31.12.1997 and 04.05.1998 issued by the Government in Housing and Urban Development Department to the Executive Officer, Polsara NAC, it appears that the Government, as a matter" of principle, has decided to open the Dispensary in the locality. Though, the notice has been made sufficient against opposite party no.2, till date none has entered appearance and in the meantime fifteen years have elapsed. Therefore, this Court considered, that no useful purpose would be served either by adjourning the matter or issuing fresh notice to opposite party no.2, and decided to dispose of the matter at the stage of admission.

6. As would be evident from the records, admittedly the Polsara NAC has passed a resolution for opening of a Homeopathic Dispensary for public purpose in Its locality and accordingly recommended to the Government for such creation. In response thereto, the Government, on careful consideration of the proposal along with the recommendation of the Director, Indian Medicine and Homeopathy, Odisha received on 16.2.1995, by order dated 31.12.1997 accorded ex-post facto approval for opening of one Homeopathic Dispensary under Polsara NAC in relaxation of, the imposition made in the Department Circular dated 31.12.1980 in the public interest subject to the terms and conditions that; (a) the Homeopathic Doctor appointed/to be appointed must be a registered practitioner, as provided under Section 21 (2) of the Odisha Homeopathic Act, 1956, and (b) he should possess qualification under 2nd and 3rd Schedule recognized by the Homeopathic Central Council Act, 1973. The Dispensary should be opened for inspection by the Officers of the Directorate of the Indian Medicines and Homeopathy, Odisha. Any report and return called for by the Directorate of Indian Medicines and Homeopathy, Odisha in connection with the affairs of the Dispensary should be furnished to them and the post of Homeopathic Medical Officer shall carry a consolidated pay of Rs.1000/- per month only till a regular post I" the approved scale is created after improvement of financial condition of the NAC and entire expenditure on account of opening and maintenance of the Dispensary including the salary of the Medical Officer shall be borne by the NAC

from out of their own fund and no liability shall be accrued to the Government on that account. It is further stated that steps have been taken separately for issuance of formal sanction order by the department relating to creation of the aforesaid post. Further, a reminder was issued on 04.05.1998 calling upon the NAC to furnish the income and expenditure statement of the NAC through the Collector, Ganjarn tor taking furl-he", necessary action to create a post of Homeopathic Doctor under the said NAC. In response to the same", the NAC has also provided necessary information vide letter dated 28.01.2000. But, as it appears, thereafter no action has" been taken. Consequentially, the petitioners approached this Court by filing the present writ application and, in the meantime, 15 years have elapsed. It is alleged that due to Inaction of the authority I the petitioners want to pursue this matter before this Court even after long lapse of time.

7. Article 21 of the Constitution of India postulates as follows :

"21. Protection of life and personal liberty-No person shall be deprived of his life or personal liberty except according to procedure established by law."

Right to live with human dignity being a fundamental right enshrined under Chapter-III of the Constitution of India, the petitioners, who are citizens of India, have to live as human beings with dignity.

8. In *State of Punjab and others v. Mohender Singh Chawla*, AIR 1997 SC 1225, the Apex Court held that it is now settled law that right to health is an integral to right to life. Government has constitutional obligation to provide the health facilities.

9. Similarly, in *Vincent Panikurlangara v. Union of India and others*, AIR 1987 SC 990, the Apex Court held that in a welfare State, it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health. Maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society which the Constitution makers envisaged. Attending to public health is of high priority.

10. In view of the constitutional mandate and the law laid down by the apex Court, the State owes a responsibility to provide the minimum health facility to its citizens. Therefore, the State Government has already considered the recommendation of Polsara NAC with regard to opening of the Homeopathic Dispensary imposing certain conditions, as mentioned above. There was no other impediment on the part of opposite party no.2 to carry out the same. Delay in implementation of the order passed by the Government and not making any follow up action itself indicates that it is an inaction. on part of the authorities. Therefore, with all fairness, the State Authority has to ensure the compliance of the letters dated 31.12.1997 and 04.05.1998 in Annexures-5 and 6 respectively. While ensuring Annexures-5 and 6, they must also take into consideration the compliance made by the NAC in Annexure-7.dated 28.01.2000 and also the

present scenario of the NAC in question.

11. In the above view of the matter, this Court considered it expedient to direct the opposite parties to ensure compliance of the letters mentioned in Annexures-5 and 6 for opening of Homeopathic Dispensary at Polsara NAC as expeditiously as possible to fulfil the constitutional mandate, as enshrined under Article 21 of the Constitution of India. Accordingly, the writ application is allowed in part. A copy of the judgment be handed over to learned Additional Standing Counsel for compliance forthwith.

Vineet Saran, C.J. :- I agree.