

(1999) 08 OHC CK 0018
In the Orissa High Court
Case No : O.J.C. No. 2874 of 1997

Sangram Keshari Pande and Others	Vs	APPELLANT
State of Orissa and Others		RESPONDENT

Date of Decision : 10-08-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 25, 492(2)
Orissa Law Officers Rules, 1971 — Rule 5
Penal Code, 1860 (IPC) — Section 34, 380, 506

Citation : (2000) CriLJ 1625 : (1999) 17 OCR 391

Hon'ble Judges : A. Pasayat, Acting C.J.; P.C. Naik, J

Bench : Division Bench

Advocate : None, for the Appellant; Manoj Misra, Additional Government Advocate, D.K. Patnaik, Satyajit Mohapatra and S. Patnaik, for the Respondent

Judgement

A. Pasayat, Actg. C.J.

1. Alleging that there was illegality in the appointment of Shri Subash Chandra Kar Mohapatra an Additional Government Pleader in the district of Mayurbhanj a letter was addressed to Hon"ble the Chief Justice which was treated as a writ application.

2. Illegality has been attached to the appointment primarily on two grounds. Firstly, there was clear violation of the provisions of Section 25 of the Code of Criminal Procedure, 1973 (is short, the "Code") and the requirement of the Orissa Law Officers" Rules, 1971 (in short, the "Rules"). The then Legal Remembrancer played a vital role in the appointment. Mala fides have been attributed including the allegation of corruption against him. It is stated that the District Magistrate has to draw up a panel of names arranged in order of merit from amongst the legal practitioners of the district in consultation with the District and Sessions Judge. The recommendation has to be submitted through the concerned Revenue Divisional Commissioner to the Legal Remembrancer for orders of the State Government, This was not done in the case at hand.

Reference in this context is made to Rule 5 of the Rules, which reads as follows :

5. Procedure of appointment.-(1) In appointing a Law Officer, the District Magistrate shall draw up in consultation with the District and Sessions Judge a panel of five names arranged in order of merit from amongst the legal practitioners of the district who are willing to act as such and submit the same with his recommendations through the concerned Revenue Divisional Commissioner to the Legal Remembrancer for the orders of the State Government.

(2) The District, Magistrate shall, while making recommendation to the State Government for appointment of Law Officers, furnish the following particulars, namely :-

(i) Qualification

(ii) Age

(iii) Number of years of practice at the Bar

(iv) Field of specialisation

(v) Reliability

(vi) Efficiency, and

(vii) An appraisal by the District and Sessions Judge of the nature and quality of advocacy, general repute and personality.

(3) Two months prior to the expiry of the term of a Law Officer, the District Magistrate shall, after consultation with the District and Sessions Judge, submit the panel of names as aforesaid through the Commissioner to the Legal Remembrancer for the orders of the State Government.

(4) In case of any contingency arising due to temporary absence or vacancy in the office of the Law Officer for any reason whatsoever, subject to the provisions contained in Section 492(2) of the Criminal Procedure Code, 1898 (Act 5 of 1898) the State Government may appoint a Law Officer temporarily till the return of the existing incumbent or the vacancy is filled up, as the case may be.

3. It is alleged that the proposal was initiated by the then Legal Remembrancer who instead of merits, views of the District Magistrate indicated the name of Subash Chandra Kar Mohapatra to be a recommended one and wanted the District Magistrate to confirm the same. No panel was prepared and only the name of Subash was indicated. Recommendation was not sent to the Revenue Divisional Commissioner, and there was no consultation with the District and Sessions Judge.

4. Secondly, it is submitted that Subhash had no good reputation and is an accused in G.R. case No. 567 of 1993 for alleged commission of offence under Sections 380, 506/34 of the Indian Penal Code, 1860 (in short, "IPC") pending in

the Court of J.M.F.C., Baripada. These according to the petitioners are sufficient to show non-application of mind and non-desirability of Subash being considered for appointment to the post of Additional Government Pleader.

5. Counter-affidavit has been filed wherein it has been stated that in response to the Law Department letter dated 6-7-1995, the District Magistrate, Mayurbhanj had recommended a panel of names of lawyers of Mayurbhanj district for appointment of Government Pleader/Additional Government Pleader/Public Prosecutor/Additonal Public Prosecutor/Associate Lawyer and (sic) It was done in consultation with the District and Sessions Judge, Mayurbhanj. Name of Subash Chandra Kar Mohapatra was in the panel of names recommended for appointment as Additional P.P. and Associate Lawyer. As per the said recommendation, Shri H.K. Panigrahi was appointed as Government Pleader and Shri K.S. Singh was appointed as A.G.P. for the district of Mayurbhanj. Subsequently Shri H.K. Panigrahi resigned from the post of Government Pleader, Mayurbhanj, which was accepted and Shri K.S. Singh, the Addl. Government Pleader was appointed as Government pleader, as a result of which the post of Addl. Government Pleader fell vacant. In order to fill up the said post, Government decided to appoint Shri Subash Chandra Kar Mohapatra. Accordingly the District Magistrate, Mayurbhanj was requested by the Law Department in its letter dated 29-10-1996 to furnish suitability or otherwise of Shri Subash Chandra Kar Mohapatra. On the basis of recommendation of District Magistrate, Shri Mohapatra was appointed. It has been stated that so far as the criminal case is concerned for the first time it was brought to the notice of the Law Department that a criminal case is pending against Shri Mohapatra, and after receiving the said information the matter is being enquired into at the departmental level.

6. With reference to Section 25 of the Code it has been stated in the petition that the name of Shri Mohapatra was suggested by the opposite parties, more particularly the then Legal Remembrancer. Therefore, the requirement of District Magistrate recommending the name was not followed. Even after receiving the complaint regarding involvement of Shri Mohapatra in the criminal case, no effective enquiry has been conducted to decide his suitability or otherwise to continue in the post. The learned counsel for State; submitted that procedural aspects have been duly followed. Similar is the stand taken by learned counsel appearing for Subash.

7. Pursuant to our direction the records relating to appointment of Subash were produced before us by learned counsel for State. Certain revealing features attracted our notice. Firstly, certain politicians Including a Member of State Cabinet seem to have sponsored the name of Subash. By letter dated 6-9-1996 a Minister of the Cabinet had written as follows :

Shri Subash Kar Mohapatra, Advocate of Baripada may please be appointed as Additional Government Pleader, Mayurbhanj.

Sd. Minister.

On 27-8-1996, the Minister of Law, passed an order that Shri Subash Kumar Mohapatra, Advocate may be appointed as Additional Government Pleader, if his name has been recommended by the Collector, Mayurbhanj. On 25-10-1996, the Legal Remembrancer-cum-Addl. Secretary to Government wrote a letter to the Collector and District Magistrate, Mayurbhanj in the matter of appointment of Additional Government Pleader. This letter has considerable significance for this case and needs to be extracted in full. Relevant portion of the same reads as follows :

In inviting reference to the memo cited above I am to say that consequent upon appointment of Shri Krupasindhu Singh, Additional Government Pleader, Mayurbhanj as Government pleader, Mayurbhanj, the post of Additional Government Pleader, Mayurbhanj has fallen vacant. An advocate namely Shri Subash Kar Mohapatra has been recommended for such appointment.

(Underlined for emphasis)

It is seen from the records that three Members of the Orissa Legislative Assembly, and a Member of the Parliament requested the Minister of Law to appoint Subash. Ultimately Subash has been appointed as Additional Government Pleader.

8. Learned counsel for State submitted that even though these recommendations/ requests were there the appointment was made only after the recommendation of the District Magistrate was received as required under law. We treat this submission to be a red-herring. What is required u/s 25 of the Code and Rule 5 of the Rules is recommendation of panel of names by the District Magistrate after consultation with the District and Sessions Judge. Had the Legal Remembrancer sought for the views of the District Magistrate only, the position would have been different. Apart from the fact that reference has been made to certain recommendations, the manner in which views of the District Magistrate was sought to be obtained is unknown to law. If really the State Government was to act on the recommendation of the District Magistrate, there was no necessity to indicate in the letter to the District Magistrate that name of Subash was recommended. Obviously the recommendations refer to the desire of the Minister and the Members of Orissa Legislative Assembly and Parliament. The records reveal that larger number of such requests have been received from various Members of Orissa Legislative Assembly and Parliament for appointment as Government Pleader. It goes to show that the statutory requirement of the Code and the Rules are sought to be circumvented for making the appointment without real and proper assessment of merits. Further, statement in the counter-affidavit to the effect that after receiving the notice the opposite parties came to know of the pendency of the criminal case is a travesty of truth. In fact, the records reveal that a copy of the letter addressed to Hon'ble the Chief Justice which was treated as writ application was sent to the Minister of Law and on 12-3-1997 the Minister of Law had asked the matter to be examined. The file reveals that the then Legal Remembrancer gave a note on 13-3-1997 stating

that appointment was validly done. Therefore, the counter-affidavit filed to the effect that the pendency of criminal case could not be known and for the first time it has been brought to the notice of Department of Law that a case is pending against Subash is palpably false. The records also do not reveal as to what decision has been taken by the State Government as to the desirability or otherwise of the continuance of Subash, though in the meantime nearly three years have elapsed. The statement that matter is being enquired into is equally false. Additional, allegations touching integrity of the then Legal Remembrancer have been made. But he had not chosen to file any affidavit himself and instead pursuant to his suggestions, the First Additional Legal Remembrancer-cum-Joint Secretary to Govt. of Orissa, Law Department has filed counter-affidavit.

9. The factual position as highlighted above gives a bad taste in mouth. Law prescribes a particular mode for appointment of law officers. The legislative intent is apparently reflected in Section 25 of the Code and the Rules further clarify the position. Appointment of State's counsel at the behest of political leaders has dangerous potentialities. Interest of the State cannot be safe in the hands of persons appointed on the basis of political desires. Suitability of a counsel to be appointed as State's counsel has to be caused by the District Magistrate in consultation with the District and Sessions Judge, who will have to assess the merit of a counsel to be appointed as State's counsel to protect its interest. Any departure is likely to be counter-affidavit. Manner in which appointment of Subash has been done certainly raise eyebrows. It almost gives an impression that Subash was imposed on the District Magistrate to be the choice and he had to merely endorse the same. It is certainly not the proper course to be adopted. Additionally no decision appears to have been taken as regards suitability of Subash to be continued as State's counsel during pendency of the criminal case.

10. In the petitioner circumstances, we dispose of the writ application with a direction to the State Government to take a decision as regards desirability of continuance of Subash as Additional Government Pleader. We make it clear that we have not expressed any opinion as to the suitability or otherwise because of pendency of the criminal case. State Government is the best Judge to appoint its counsel to protect its interest.

The writ application is allowed to the extent indicated above. No costs.

P.C. Naik, J.

11. While agreeing with the view expressed by brother Pasayat, A.C.J., I would like to add the following :

In paragraph 6 of the judgment a part of the letter dated 29-10-1996 of the L.R.-cum-Addl. Secretary to Government addressed to the Collector and District Magistrate, Mayurbhanj has already been quoted. I may quote below the second part of the said letter which reads thus :

XXX XXX XXX XXX XXX XXX

I am, therefore, directed to request you to kindly intimate this Department, the suitability or otherwise of Shri Kar Mohapatra for appointment as Addl. G.P., Mayurbhanj in accordance with law.

(Emphasis supplied)

12. The case of the opposite parties, as emerges from the counter-affidavit is that the name of Shri Subash Kar Mohapatra was in the earlier panel recommended by the District Magistrate, Mayurbhanj and, therefore, his appointment is proper. However, this does not appear to be correct, for if the appointment of Shri Subash Kar Mohapatra was on the basis of his name being included in the panel sent by the District Magistrate, Mayurbhanj at an early part of time where was the occasion for the Legal Remembrancer to send the letter dated 29-10-1996 requiring the District Magistrate, Mayurbhanj to again intimate the department about the "suitability or otherwise of Shri Kar Mohapatra for appointment as Addl. G.P., Mayurbhanj...." This, therefore, belies the contention of the opposite parties that his appointment was made because his name was already in the panel. It may be stated that in the letter dated 29-10-1996 it was mentioned by the then Legal Remembrancer that "... An Advocate namely Shri Subash Kar Mohapatra has been recommended for such appointment." The word "recommendation" in the context of the contents of the letter clearly, in my view, refers to the "recommendation" made by the elected representatives and has no reference to the earlier panel sent by the District Magistrate, Mayurbhanj.

13. From the record it is clear that the letter on the basis of which the public interest litigation was registered was also forwarded to the Law Minister and was marked by his Private Secretary to the Legal Remembrancer on 4-3-1997. Once the fact that Shri Subash Kar Mohapatra was an accused in G.R. case No. 567 of 1993 (State v. Subash Kar Mohapatra and Ors.) for commission of offences under Sections 380/506/34, I.P.C. in the Court of Shri S.K. Pate, J.M.F.C., Baripada, was brought to the notice of the Government, it was incumbent upon the opposite parties to make prompt enquiry into the matter and take appropriate action in that regard. On the contrary, nothing appears to have been done in that regard. Though in the counter-affidavit of the Law Department, it is mentioned that the matter regarding pendency of criminal case against Shri Subash Kar Mohapatra is being enquired into at the departmental level but the department did not think it proper to inform the Court about the result of the enquiry, if any, made by the Department. On 21-11-1997 this Court had directed the opposite parties to file an additional affidavit indicating the latest position but that was not done and even at the time of hearing, the Court was not informed as to whether or not any enquiry had, in fact, been held regarding the serious allegation made against Shri Subash Kar Mohapatra. Moreover, though Shri Subash Kar Mohapatra was permitted to intervene and was also granted time to file a counter, it was not filed. Hence, the Court was, if I may say so, prevented from

knowing whether in spite of this petition and earlier knowledge about the pendency of the criminal case, he (Shri Kar Mohapatra) was permitted to continue or not. The entire thing, so to say, leaves a bad taste in the mouth.