
(2018) 03 OHC CK 0046
In the Orissa High Court
Case No : W.P.(C) NO.427 OF 2002

Sk. Rahimullah

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 16-03-2018

Acts Referred:

Orissa Consumer Protection Rules, 1987 — Rule 3(6)(d), 3(6), 3

Citation : (2018) 03 OHC CK 0046

Hon'ble Judges : BISWANATH RATH

Bench : Single Bench

Advocate : S.K.Pattnaik, P.K.Pattnaik, S.P.Das, S.Das, S.Pattnaik, K.K.Mishra

Final Decision : Allowed

Judgement

Biswanath Rath, J. Â

1. Filing the writ petition the petitioner being a Member of the District Consumer Forum, Jharsuguda has challenged the order of his removal

passed by the competent authority, vide Annexure-1.

2. Sri S.K.Pattnaik, learned senior counsel for the petitioner taking this Court to various documents filed along with the writ petition and placing

reliance on the show cause notice at Annexure-10 and the averments made in paragraph-7 of the writ petition submitted that following receipt of

show cause notice dated 16.4.2002, vide Annexure-10 asking the petitioner to submit his explanation by 23.4.2002, for the petitioner's

approaching the competent authority issuing the show cause notice for grant of time to file his response to the show cause on account of illness of

his mother at the relevant point of time. Sri Pattnaik, learned senior counsel for the petitioner submitted that taking final decision pursuant to the

show cause notice instead of granting bare minimum time is improper. Referring to the provision at Rule 3(6)(d) of the Orissa Consumer Protection

Rules, 1987, for issuance of the show cause notice and for the charges and the allegations involving the petitioner, Sri Pattnaik, learned senior

counsel for the petitioner contended that at the minimum one more chance should have been provided to the petitioner to submit his explanation to

the show cause notice under Annexure-10. For the nature of ex parte order and in absence of no consideration of the case of the petitioner, Sri

Pattnaik prayed for interference of this Court in the impugned order at Annexure-1.

3. In his opposition, Sri K.K.Mishra, learned Additional Government Advocate for the State seriously objecting the submission of the learned

counsel for the petitioner and taking this Court to the documents available in the writ petition itself more particularly the document at page-24 of the

brief submitted that the petitioner had a checkered career and the petitioner was a habitual absentee. Considering his previous absence and non-

attendance in the court proceeding on earlier occasion, the petitioner was already exonerated previously. Further referring to the provision at

Rule 3(6)(d) of the Orissa Consumer Protection Rules, 1988 inviting removal of service of the President or a Member for his remaining absent in

three consecutive sittings of the Forum, Sri K.K.Mishra, learned Additional Government Advocate for the State thus contended that there is

otherwise no illegality in the order of removal requiring this Court for interference in the same.

4. Considering the rival contentions of the parties, this Court finds, admittedly the petitioner was a Member in the District Consumer Forum,

Jharsuguda. So far as the allegation made by Sri Mishra involving the petitioner at page-24 is concerned, this Court finds the allegations therein are

all related to the President and not the Member, the present petitioner, thus has no bearing on the case of the petitioner. Accordingly, this Court

finds, there is no substance in the above submission of Sri Mishra.

5. This Court taking into consideration the Rule-3(6)(d) of the Orissa Consumer Protection Rules, 1988 finds, the Rule reads as follows :-

“3(6)-The President or a member of a District Forum shall cease to be the President or members, as the case may be, if he â?

(d) remains absent in three consecutive sittings of the District Forum. The proviso to Rule-6 reads as follows :-

^ Provided that the membership on any of the grounds specified in Clauses (f), (g) and (h) above shall cease either on his own admission or on the basis of a finding by an enquiry caused by the State Government.^?

6. Reading of the aforesaid provision in the Rules, this Court finds, the proviso attached to the Rule requires enquiry involving the allegation

involving Clauses (f), (g) & (h) of Sub-Rule (6) of Rules-3. Therefore, there is no provision in the Rule, 1987 requiring enquiry involving other

offences under Rule 3 of the Rule, 1987. But however, penalty being maximum, taking away the service of a person, this Court observes that even

though there is no provision provided for entering into any enquiry involving an offence under the Clause (d) of Sub-Rule (6) for the nature of

allegations against the petitioner involving Annexure-10 and explanation being called for from the petitioner, since the petitioner was not able to file

any response to the show cause at the bare minimum a further chance to file response to the show cause to the petitioner should have been

granted. It is under the circumstance and since the order of removal is passed without providing reasonable opportunity of objection to the show

cause, this Court finds, the order of removal at Annexure-1 is not sustainable in the eye of law. It is at this stage, considering the allegation involving

the petitioner at Annexure-10, a fresh consideration is required involving the allegation of unauthorised absence by the petitioner, this Court while

setting aside the order at Annexure-1 directs the competent authority to accept the response of the petitioner to the show cause at Annexure10,

which will be submitted by the petitioner within two weeks hence and pass a fresh order involving the show cause at Annexure-10 taking into

consideration the explanation of the petitioner within a further period of one month but however giving opportunity of hearing to the petitioner also.

Following the ratio held by the Honâ??ble apex Court in the case of Managing Director Ecil Hyderabad vrs. B.Karunakar reported in (1993) 4

SCC 727, entitlement of any emolument by the petitioner shall be subject to the ultimate outcome in the fresh order to be passed by the competent

authority. The writ petition succeeds. No cost.