
(2000) 04 OHC CK 0020
In the Orissa High Court
Case No : O.J.C. No. 7331 of 1999

Smt. Chudamani Patra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 20-04-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2000) 1 OLR 608

Hon'ble Judges : L. Mohapatra, J;C.J.MANUOR01922000.htm, J

Bench : Division Bench

Advocate : Sachidananda Sahoo, for the Appellant; Additional Government Advocate for Opp. party Nos. 1 to 3 and Sr. Standing Counsel (Central) for Opp. party No. 4, for the Respondent

Judgement

1. Heard learned counsel for parties

2. It appears that petitioner's husband retired on 30.4.1979 and as for a period of 20 years, the post-retirement benefits had not been paid the petitioner, who claims to be his widow, had no other option but to file this writ application on 23.6.1999, after serving a copy thereof upon learned counsel appearing on behalf of the State. Thereafter the case was put up before the Bench after about two months, i.e., on 16.8.1999 on which date two more copies were directed to be served upon learned counsel appearing on behalf of the State to obtain instruction and the case was adjourned for two weeks. Unfortunately the case was listed on 8.3.2000, i.e., after seven months and on the said date we gave a clear cut direction to the State Counsel to file counter affidavit on behalf of the State on the next date fixed in the case.

3. On 10.4.2000 learned counsel for the State stated that he had simply received statement of facts, but no counter affidavit could be filed. We really fail to understand whether the direction had been given to him to only obtain statement of facts or to file counter affidavit. It is needless to say that when Court asks an officer to file counter affidavit that can never mean to simply send statement of

facts to learned counsel for the State. As no counter affidavit was filed on behalf of the State, we directed that the District Inspector of Schools, Kaptipada. Udala (opposite party No. 3) within the district of Mayurbhanj shall remain present in Court on the next day, i.e., 11.4.2000 at 7.30 A.M. Pursuant to that direction opposite party No. 3 appeared in Court in person on 11.4.2000 and on that date a counter affidavit was filed in which no explanation at all was furnished as to why counter affidavit was not filed on 10.4.2000. As on that date there was paucity of time, we could not pass any further order and adjourned the case for today and directed opposite party No. 3 to appear in person today as well. Pursuant to the aforesaid direction, he has appeared in person today also.

4. Further affidavit has been filed on behalf of opposite party No. 3 today in which it has been stated that copy of letter No. 8494 dated 9.3.2000 sent from the office of the Advocate General to the Commissioner-cum-Secretary to Government, School and Mass Education Department was received by him on 28.3.2000 intimating therein to file counter-affidavit within ten days positively. Thereafter by letter dated 30.3.2000 opposite party No. 3 sent para-wise comments to the office of learned Advocate General for preparation of counter affidavit which was received here on 4.4.2000. It has been stated in the affidavit that on 8.3.2000 this Court had adjourned the matter to 10.4.2000 and directed to serve a copy of the order dated 8.3.2000 on the learned counsel appearing for the State, which was issued by the Superintendent of this Court on 7.4.2000 and same was received on 10.4.2000 by learned counsel for the State. It has been further stated that opposite party No. 3 was not aware that counter affidavit had to be filed by 10.4.2000.

5. We direct concerned Superintendent to report on the question as to when order dated 8.3.2000 was served upon learned counsel for the State and in case it was served on 10.4.2000, he shall submit explanation for the same. But service of copy of this Court's order had absolutely no connection with the filing of counter affidavit as the State Counsel had already intimated all the details in his letter dated 9.3.2000. Learned counsel appearing on behalf of the State has produced before us a copy of the letter sent by him to the Commissioner-cum-Secretary to Government of Orissa, Department of School and Mass Education bearing No. 8494 dated 9.3.2000, a copy whereof was sent to opposite party No. 3 under memo No. 8495 dated 9.3.2000, in which all the details were given and in the last portion of the letter, following direction was given :

".....Kindly take steps to file counter affidavit whether the petitioner is entitled to family pension and T.I. or not within ten days positively as directed by the Hon"ble Court.

Treat this letter as most urgent."

6. From the aforesaid direction, it appears that the State Counsel intimated opposite party No. 3 that counter affidavit must be filed within ten days positively as directed by this Court and in the letter it was further intimated that

the letter be treated as most urgent. In spite of all these facts, opposite party No. 3 simply sent statement of facts to the office of learned Advocate General instead, of coming to this Court or sending somebody for filing counter affidavit.

7. It is our experience that because of non-filing of counter affidavit by the State within the time schedule, time of the Court is wasted and the litigant public have to suffer. Firstly, we have come across that in the State of Orissa so many arbitrary orders are passed by the Government officials as a result of which the litigant public have no option but to move the High Court by filing writ applications. We have further come across cases in which dues are legally payable, but the same are not paid to the citizens unless they move the High Court by filing writ applications, for the reasons best known to the officials. We find that in no case counter affidavit is filed after service of copy of the writ application, and even after adjourning the case for three or four occasions We are at loss to find out reason for the same. Therefore, we directed the then Chief Secretary to the Government of Orissa to direct each and every officer that the directions contained in the letter of State Counsel sent to them for filing counter affidavit shall be treated as an order of the Court and comply with the same within the time schedule mentioned therein. We further directed that in case anybody fails to carry out the direction contained in the letter of the State Counsel, he shall be liable to be hauled up for contempt. He was also directed earlier to get copy of order of this Court served on each and every officer within the State of Orissa and take receipt from them. Pursuant to that order the then Chief Secretary issued a direction to all the officers by sending a letter, a copy whereof was forwarded to one of us (Chief Justice of this Court) about two months ago.

8. In our view, in the State of Orissa the officers do not comply with order of Court as if it has no sanctity. In spite of the fact that time is fixed for compliance of order of Court, the same is not complied with unless and until a contempt application is filed. Because of such attitude of the officers, the citizens are suffering by running from pillar to post.

9. In view of the aforesaid facts, we are clearly of opinion that prima facie opposite party No. 3 has violated directions contained in order dated 8.3.2000 for filing counter affidavit by 10.4.2000 and it is a fit case for initiation of a proceeding for contempt. Accordingly, we initiate a proceeding for contempt directing opposite party No. 3 to file show-cause by the next date fixed in this case.

10. As we have initiated a contempt proceeding after recording prima facie finding that opposite party No. 3 has violated order of this Court, in our opinion, it is high time that the disciplinary authority should consider desirability of suspending opposite party No. 3 for violation of order of this Court in contemplation of departmental proceeding. We accordingly direct that a copy of this order be sent to Chief Secretary, Government of Orissa, Bhubaneswar through special messenger at the cost of Court, who upon receipt of the same, if

he is the disciplinary authority, or in case he is not the disciplinary authority of opposite party No. 3 shall place before the disciplinary authority, to consider desirability of suspending opposite party No. 3 in contemplation of departmental proceeding against him for violation of order of this Court as stated above.

Put up this matter for admission on 8.5.2000 to enable opposite party No. 3 to file show-cause in contempt matter.

Let a copy of this order be made over to learned counsel appearing on behalf of the State.