

(2007) 02 OHC CK 0046

In the Orissa High Court

Case No : Writ Petition (C) No. 499 and 3024 of 2006

Smt. Lilima Nayak

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 05-02-2007

Acts Referred:

Essential Commodities Act, 1955 — Section 6A

Citation : (2007) CLT 643 (Suppl CrI) : (2007) 1 OLR 526 Supp : (2007) OLR 643 (Suppl CrI)

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : Milan Kanungo, for the Appellant; Additional Government Advocate and S.C. Samantaray in W.P. (C) No. 499/06 and O.P. No. 7 in W.P. (C) No. 3024/06, for the Respondent

Judgement

A.S. Naidu, J.—The facts and points of law involved in both these Writ petitions being the same, with consent of counsel for the parties both the cases were heard together.

2. The Petitioner in both the Writ Petitions was the sub-wholesaler licence holder for Kerosene Oil under the Orissa Public Distribution System (Control) Order, 2002 in respect of Patrapur under Aul Block in Kendrapara district. Basing on a report of the Enforcement Squad of Bhubaneswar alleging that on 3.3.2005 the said squad detected some irregularities at her sub-wholesale point, the Collector of Kendrapara, on 9.9.2005, issued a notice calling upon her to show cause why her aforesaid sub-wholesaler licence should not be cancelled. Pursuant to that notice, the Petitioner submitted her show-cause reply. As there was delay in disposal of the matter by the Collector, the Petitioner approached this Court in W.P. (C) No. 9217/05. This Court disposed of the said Writ Petition on 29.7.2005 directing the Collector to consider the show-cause reply filed by the Petitioner and dispose of the matter expeditiously. Before the matter was not disposed of by the Collector, one Guru Charan Biswal, intervenor in W.P. (C) No. 499/06 and

opposite party No. 7 in W.P. (C) No. 3024/06, was appointed as the sub-wholesaler at Singiri Bazar and the quota of Kerosene Oil of the Petitioner in respect of Patrapur under Aul Block was discontinued. Therefore the Petitioner again approached this Court assailing the said order of appointment of aforesaid Guru Charan Biswal as a sub-wholesaler vide W.P. (C) No. 9826 of 2005. The said Writ Petition was disposed of granting liberty to the Petitioner to move the Collector and directing the Collector to look into her grievance. It is alleged that thereafter the Collector passed the following order on 14.11.2005:

After careful consideration of the fact, the show cause reply of Smt. Lilima Nayak, K. Oil Sub-wholesaler Patrapur under Aul Block dtd. 14.3.2005 and 26.9.2005 is logical and cogent. She is exonerated from all charges, i.e., 6-A proceeding and State Enforcement Squad Report. It is hereby directed to C.S.O., Kendrapara to refund her Book of Account and the cost of 1217 Ltrs. K. Oil immediately.

Thereafter, the Collector again passed Anr. order on 16.11.2005 which was to the following effect:

After careful consideration of the fact, the prayer of the Petitioner Smt. Lilima Nayak, K. Oil Sub-wholesaler, Patrapur under Aul Block, grievance petition dt. 10.8.05 and dt. 5.11.2005 is logical and cogent and allowed to act as such as per Govt. provision w.e.f. 1.12.05. As per the direction of Hon'ble High Court Orissa, Cuttack Order W.P. (C) No. 9896/05 dtd. 09.8.05. K. Oil Sub-wholeseller at Singiri Bazar of Sri Guru Charan Biswal is cancelled from 01.12.2005.

Further, being aggrieved by the appointment of aforesaid Guru Charan Biswal, the Petitioner had also filed an appeal. The appellate authority disposed of the said appeal holding that since in the meanwhile the Collector had cancelled the appointment of said Guru Charan Biswal, there was nothing left to be decided in the appeal.

3. The grievance of the Petitioner in these two Writ Petitions is that, in spite of specific orders passed by the Collector on 14.11.2005 and 16.11.2005 dropping the proceeding initiated against the Petitioner u/s 6-A of the Essential Commodities Act and directing to return the documents and registers, etc. seized from the Petitioner and renewing her licence, the concerned authorities are not implementing the said orders only because the then Collector was transferred from Kendrapara on 17.11.2005.

4. After receiving notice, the State Government filed a counter-affidavit taking the stand that no order was ever passed by the erstwhile Collector either on 14.11.2005 or 16.11.2005, and in fact on 16.11.2005 the case had been adjourned. Thereafter the proceeding u/s 6-A of the E.C. Act, initiated against the Petitioner, was heard by the successor Collector who disposed of the same holding the Petitioner guilty of the alleged irregularities. It was averred that in view of the aforesaid facts the Writ Petitions are liable to be dismissed in limine.

The intervenor/opposite party Guru Charan Biswal also filed a counter-affidavit more or less taking the same stand as taken by the State.

5. In course of hearing, the main controversy that arose was with regard to the orders passed by the Collector on 14.11.2005 and 16.11.2005. While the learned Counsel for the Petitioner submitted that the Collector had disposed of the proceeding initiated against the Petitioner u/s 6-A of the E.C. Act on 14.11.2005 and 16.11.2005 directed renewal of her licence, according to the learned Counsel for the State no such order was ever passed by the Collector on file. In order to resolve such controversy, this Court called up the State to file specific counter-affidavit of the concerned authority and produce the relevant files. After going through the said file, this Court being not satisfied called upon the then Collector to appear before this Court and file an affidavit specifically affirming on oath as to whether any order was passed by him 14.11.2005 and 16.11.2005. In response to the said direction, Shri Hemanta Sharma, IAS, the then Collector of Kendrapara, at present the Director of Industries, Orissa, Cuttack appeared in Court and filed an affidavit. Paras 3, 4 and 5 of the said affidavit read as follows:

3. That while working as Collector, Kendrapara, I was adjudicating a proceeding u/s 6(a) of the E.C. Act against Smt. Lilima Nayak, Kerosene Sub-wholesaler of Patrapur under Aul Block of Kendrapara district. In this regard, while disposing of W.P. (C) No. 9217/2005, the Hon"ble High Court of Orissa had directed Collector, Kendrapara to consider the applications filed by the Petitioner, i.e., Smt. Lilima Nayak as expeditiously as possible preferably within a period of two weeks from the date of communication or order and return the documents seized, if the proceeding has been dropped and/or if there is no other impediment.

Having received this direction of the Hon"ble High Court and in the course of proceedings in my Court and taking into account the facts and circumstances as well as the show cause reply submitted by Smt. Lilima Nayak, I disposed of the case by passing an order on 14.11.2005. This order was also communicated to C.S.O., Kendrapara for necessary action.

4. Further while working as Collector, Kendrapara, I was adjudicating a representation submitted by Smt. Lilima Nayak, Kerosene Sub-wholesaler of Patrapur under Aul Block of Kendrapara district who was aggrieved by the appointment of Anr. sub-wholesaler at Singiri under Aul Block. In this regard, the Hon"ble High Court in W.P. (C) No. 9345/2005 also issued direction to the Collector, Kendrapara to look on to the grievance of the Petitioner and pass necessary orders strictly in consonance with law. Moreover, in the same context while disposing of W.P. (C) No. 9896 of 2005, the Hon"ble High Court directed the Collector, Kendrapara to look into the grievance of the Petitioner and pass necessary orders as expeditiously as possible preferably within a period of six weeks. During the course of proceedings of adjudication of the above representation, having considered all facts and circumstances and the prayer of the Petitioner Smt. Lilima Nayak, I disposed of the matter by passing an order on 16.11.2005. The order was also communicated to C.S.O., Kendrapara for

necessary action.

5. That while explaining the facts as above, it is humbly submitted that there should be no dispute as to the passing of the order dated 14.11.2005 and 16.11.2005 and their communication to C.S.O., Kendrapara for necessary action.

6. In view of the aforesaid averments of the Collector in his affidavit, no ambiguity is left about passing of the orders by the Collector on 14.11.2005 and 16.11.2005 disposing of the proceeding initiated against the Petitioner u/s 6-A of the E.C. Act and directing renewal of her licence while cancelling the licence granted in favour of Guru Charan Biswal. It is asserted by Mr. Kanungo that on the basis of a petition filed under the Right to Information Act, copies of the orders passed by the then Collector on the aforesaid two dates had been supplied to the Petitioner, but this fact is disputed by Mr. Das. But then the Appeal filed by the Petitioner has been disposed of relying upon the orders of then Collector. Thus, it can safely be concluded that the orders passed by then Collector on 14.11.2005 and 16.11.2005 were available with the authorities, but the same were deliberately not brought to the notice of the successor Collector. Fact remains, the proceeding initiated against the Petitioner u/s 6-A of the E.C. Act was disposed of on 14.11.2005. After disposal of the said proceeding, the Collector having become functus officio it was not open to the successor Collector to deal with the matter once again. Therefore any order passed after 14.11.2005 was ab initio void and/or non-existent in the eye of law.

7. Much argument is however advanced with regard to legality and validity of the orders passed by the Collector on 14.11.2005 and 16.11.2005. But then the said orders are neither impugned in these two Writ Petitions nor assailed in appeal as per Clause 14 of the OPDS (Control) Order, 1962. Be that as it may, there are a log of arguments and counter arguments with regard to the two orders said to have been passed by then Collector on 14.11.2005 and 16.11.2005. Perusal of the records reveals that these two orders are not available there. On the other hand, the concerned Collector who appeared before this Court stated that in fact he had passed these two orders. This Court wonders as to under what circumstances the said orders were passed and how the same were/are not available in the case records. In the aforesaid scenario, this Court directs the Secretary-cum-Commissioner, Food Supplies and Consumer Welfare Department to cause an enquiry and find out the truth. It is needless to say that on such enquiry if it is found that then Collector had passed the orders dated 14.11.2005 and 16.11.2005, the same shall be implemented unless of course the same are varied by any other higher authority. In the alternative the orders passed in the case records u/s 6-A of the Essential Commodities Act by the successor Collector shall work out. The Secretary-cum-Commissioner is also directed to take or suggest the Government to take appropriate action as required under law against the erring officer(s). The entire exercise shall be completed within a period of three months from the date of communication of this judgment. Till then status quo as on date shall be maintained with regard to the distribution of Kerosene Oil

and other PDS articles.

This judgment shall be communicated at the cost of the Petitioner.