

(1997) 03 OHC CK 0009

In the Orissa High Court

Case No : O.J.C. No"s. 8765 and 11607 of 1996

Smt. Saraswati Parida and etc.

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 03-03-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1997 Ori 146 : (1997) 83 CLT 743

Hon'ble Judges : S.N. Phukan, C.J.;A. Pasayat, J

Bench : Division Bench

Advocate : D.R. Nanda, D. Panda, H. Chand, D.P. Dhal and N. Jena, for the Appellant; P.K. Jena, N. Panda, A.K. Mohapatra and Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Phukan, C.J.—By this co'mmon judgment and order, we dispose of both the writ petitions, namely, O.J.C. Nos. 8755 and 11607 of 1996, as the subject-matter in both is same, namely, allotment of 24 hours medical store in the campus of the Community Health Centre at Parjang in the district of Dhenkanal in favour of Smt. Ranjita Das, who is O.P. No. 6 and O.P. No, 4 in O.J.C. nOS. 8755 and 11607 of 1996 respectively.

2. Briefly stated, the facts are as follows :

While Smt. Saraswati Parida, the petitioner in O.J.C. No. 8755/96, who was also an applicant for allotment of the aforesaid medical store, has challenged the allotment order made in favour of Smt. Ranjita Das; Smt. Rasmita Sahoo, the petitioner in the other case (O.J.C. No. 11607/96), though not an applicant for the said medical store, has challenged the allotment order, inter alia, on the ground that neither any advertisement was made by the Chief District Medical Officer, Dhenkanal, in two local dailies nor any notice was affixed in the notice board of the office for the purpose. She has also alleged that the President of the

Advisory Committee of the Community Health Centre, Parjang, who is a sitting member of the Orissa Legislative Assembly, is related to Smt. Ranjita Das, O.P. No. 4 therein, and has influenced the Chief District Medical Officer for recommending her case to the Director of Health Services. She has alleged violation of Article 14 of the Constitution and that the allotment was made secretly and with mala fide intention.

In the first writ petition (O.J.C. No. 8755/ 96), the petitioner, who also applied for the said medical store and whose application has been rejected, has challenged the role of the Advisory Committee in recommending the name of Smt. Ranjita Das and has also alleged violation of the principle of natural justice. According to the writ petitioner, the land on which the Community Health Centre is functioning belonged to her father but it was occupied by the Revenue Department for construction of the said Centre without giving any compensation. It has also been alleged that there are five other medical stores situated outside the campus and those medical stores remain open for 24 hours to serve and fulfil the requirements of the public. She claims to be unemployed whereas Smt. Ranjita Das is aged 45 years and is the wife of a Govt. employee, who is serving as a Lecturer. According to her, in view of the Government notification, she stood on a better footing and her name should have been recommended instead of Smt. Ranjita Das. She has further stated that opposite party No. 6 Smt. Ranjita Das has suppressed the fact that she had a medical store at the time of filing of the application in the name and style "Ranjita Medical Store," which is attached to the campus of the C.H.C.

In O.J.C. No. 11607/96, Smtl Ranjita Das, O.P. No. 4,. in her counter-affidavit has averred that the petitioner has no locus standi as she was not an applicant and, that apart, at that relevant time she was not legible to apply as she was not a Pharmacist. A categorical statement has been made that the advertisement was duly issued by the C.D.M.O., Dhenkanal, which was published in the notice board of the C.H.C. and a copy thereof has been annexed as Annexure P/4. According to her, in the aforesaid advertisement dated 6-10-1994, it was specifically stated that the medical store was reserved for lady candidate of Parjang. Her application has been annexed as Annexure-B/4. She has further averred that the Advisory Committee of the C.H.C. which was duly constituted as per Government instructions communicated to the C.D.M.O., Dhenkanal, by memo No. 8030 dated 12-10-1992 to look into the smooth functioning and development of the C.H.C., not only took the decision to call for applications from lady candidates of the locality, but after receipt of applications recommended her case for allotment of the medicine store. She has also urged that one Abhimanyu Parida, Proprietor of "Medico-Prithiraj" and father of the petitioner-Saraswati Parida in O.J.C. No. 8755/96 has instigated the present writ petitioner to file the petition. In reply to the counter-affidavit filed on behalf of opposite party No. 4 Ranjita Das, it has been averred that the petitioner being a qualified Pharmacist was eligible to run the medical store.

In the counter-affidavit filed by Smt. Ranjita Das, O.P. No. 6 in O.J.C. No. 8755/96, it is stated that all the applications received in response to the advertisement were sent to the Director of Health Services along with the views/comments for final decision as per Government instructions vide Annexure-A and the Director of Health Services in his turn sent the same to the Government for final decision vide Annexure-B. After careful consideration and scrutiny of all the applications and finding opposite party No. 6 Ranjita Das to be the only suitable candidate, the Government by letter dated 26-7-1996, vide Annexure-C, allotted the medical store in her name, whereafter O.P. No. 6 deposited Rs. 6,000/- vide challan, Annexure-D, and executed the required agreement, Annexure-E. In paragraph 6 of the counter-affidavit, she has given a comparison regarding the qualification between the writ petitioner and herself. It has also been averred in the said paragraph that the writ petitioner after marriage is residing with her in-laws in village Rahas, Talcher, in the district of Angul and, therefore, she is no more a local resident and further her husband is working in Mahanadi Coalfields Ltd. at Talcher drawing a "good salary." It has been denied that the C.H.C. was constructed on the land belonging to the writ petitioner and, on the other hand, the father of the writ petitioner is running a medicine shop, namely, "Prithiraj Medical Store" encroaching upon Govt. land. It has also been denied that five medicine shops are situated close to the campus of the C.H.C. out of which three are running 24 hours. She has denied that she is the proprietress of "Ranjita Medical Store" as she gave up her proprietorship since 23-10-1993, i.e., much prior to the advertisement. In additional affidavit filed on behalf of Smt. Ranjita Das, O.P. No. 6, she has specifically denied that Prabodh Kumar Das, proprietor of "Ranjita Medical Store" is related to her in any way. She has also denied that she has any medical store and that she was/is in Government service. In her additional affidavit, she has given a genealogy to show that there is no blood relationship between her and Prabodh Kumar Das, proprietor of "Ranjita Medical Hall." On the other hand, she has made an emphatical statement that the father of the present petitioner is the proprietor of a medicine shop. In the rejoinder to the additional affidavit filed by O.P. No. 6, the writ petitioner has given a genealogy to show the blood relationship between Prabodh Kumar Das, Proprietor of "Ranjita Medical Store" and Smt. Ranjita Das, O.P. No. 6. It has also been alleged that the President of the Advisory Committee of the C.H.C. is also the blood relation of Smt. Ranjita Das, O.P. No. 6.

3. Before considering the facts of the two writ petitioner vis-a-vis the action of the State Government in allotting the 24 hours medical store in favour of Smt. Ranjita Das, let us now state the scope of judicial review of this Court in matters of administrative action and also grant of largess, by the State Government, as admittedly grant of licence to run a 24 hours medical store is a largess.

4. On the same subject, namely, grant of licence to run a 24 hours medical store, our attention has been drawn to two decisions of this Court, namely, (1) Purna Chandra Panda Vs. Government of Orissa and Others, and (2) Geetanjali Patnaik Vs. State of Orissa and Others, .

The Division Bench in Purna Chandra Panda (supra) on an overall consideration of the materials on record held that the permission granted appears to be suspicious as the authorities concerned did not act in a fair and proper manner. Therefore, the permission was quashed. In the case of Geetanjali Patnaik (supra), the Division Bench considered the law of grant of largess keeping in view the law laid down by the Apex Court in Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, . The Division Bench also considered the power of judicial review with reference to the laws prevailing in England and the Indian laws as laid down by the Apex Court and some High Courts. It is not necessary for us to burden this judgment with various decisions of England including the traditional view and subsequent view and also the classical work of Professor De Smith in "Judicial Review of Administrative Action," 4th Edition, as well as the decisions of the Apex Court. We may only summarise the settled law in this regard, namely,

(1) There is no doctrine of immunity from the judicial review as judicial review is for the purpose of the decision-making process.

(2) While examining the decision-making process, the Court has to consider as to whether there is any arbitrariness to attract Art. 14 of the Constitution or whether the authority concerned acted illegally, irrationally or in complete violation of the procedural law.

(3) Regarding grant of largess by the Govt., the Court has to examine whether, equal opportunity was given to all similarly situated persons by advertisement or otherwise. In other words, Court has to examine whether to give undue influence in granting largess, Government acted secretly, arbitrarily and in complete violation of the norms laid down for the purpose.

5. In the light of the above law, let us consider the petition filed by Smt. Rasmita Sahoo in O.J.C. No. 11607/96. Though she has complained that no advertisement was made, we find from Annexure-D/4 to the counter-affidavit that the advertisement was issued on 2-12-1994 fixing 2-1-1995 as the last date of submission of applications. From Annexure-1 to the writ petition, we find that she got the certificate to have passed the first examination in Diploma in Pharmacy held in the month of September, 1994 on 3-1-1995. Therefore, on the date of advertisement she was not qualified and so, she cannot claim any equity. Her other grievance is that the advertisement was not issued in two local dailies. This has been clarified by the Government in letter dated 26-2-1994, vide Annexure-E/4, that in so far as C.H.Cs. are concerned, applications may be invited by publishing notice in the notice board of the concerned C.H.C. This is a policy decision of the Government and we need not interfere with the said policy decision as on perusal of the said letter we are satisfied with the reasons stated therefor. Her contention that the President of the Advisory Committee is related to opposite party No. 4 Smt. Ranjita Das has been denied and no rejoinder has been filed. Therefore, her contention cannot be accepted. We may state here

that the advertisement was made for grant of largess by the State Government but the writ petition does not lie at the instance of the petitioner who was not qualified then and, therefore, she has no locus standi to agitate the matter.

6. In so far as O.J.C. No. 8755/96 is concerned, the allegation of the petitioner that C.H.C. was constructed on the land of her father is not sustainable as no document to that effect has been produced, before us.

The revised procedures for opening medical stores in the campus of medical college hospitals/district headquarters hospitals and hospitals equivalent to them and sub-divisional hospitals of the State have been laid down by the State by letter dated 13-5-1993 which are reproduced below.: --

"(1) 24 hours medical stores shall be opened only in the campus of Medical College/Dist. Headquarters Hospitals/Hospital equivalent to D.H.H. and Sub-Divisional Hospitals.

(2) Only the Medical College Hospitals shall be entitled to have two 24 hours medical stores to meet the need of the patients at competitive price.

(3) The Superintendent, C.D.M.O. and C.M.O. concerned shall at the outset assess the need for having a 24 hours medical store in the campus of his hospitals. If the need is found to be imperative he shall make an order to that effect in the connected file and issue advertisement at least in the two local dailies inviting applications from eligible persons.

(4) The application received in response to the advertisement shall be sent to the D.M.E.T./D.H.S. as the case may be. The D.M.E.T./D.H.S. shall, in turn forward the same to Govt. along with their views/comments for final decision at the Govt. level.

(5) The criteria for selection shall be as follows:

i) Any person having the requisite qualification may apply for running a medical store in Govt. Hospitals.

ii) A person to be considered eligible for the purpose shall preferably be a registered Pharmacist either with a degree or diploma in Pharmacy. But a person who can engage a Pharmacist irrespective of whether he himself is a Pharmacist or not may also be considered.

iii) A person having previous experience of running a medical store shall be given preference if he can furnish document in support of that, But he will get lower priority vis-a-vis applicant who is a registered Pharmacist.

iv) The other thing being equal persons who have crossed the age limit for entry into Govt. service shall be given preference,

(6) The person selected shall:

a) Execute agreement for three years to be renewed annually if the performance

of the person is satisfactory.

b) Furnish an undertaking that he will keep the shop open round the clock and that the medicines that are urgently required for local purchase by the Hospitals will be supplied by him immediately.

c) Not put up any permanent structure on the site. For the temporary structure constructed he will be given only the right of temporary occupation, The person will remove the temporary structure whenever required by the Department on one month's notice.

d) Furnish an undertaking that he will strictly comply the Drugs and Cosmetics Act.

e) Deposit Rs. 5000/- only with the Govt. before permission is granted. Renewal of permissions beyond three years will be considered only after deposit of Rs. 2000/- per year and subject to the smooth functioning of the drug store during the earlier period.

(7) A copy of the agreement incorporating the above and concurred in by the Law Department is enclosed herewith.

(8) The officer(s) authorised under Article 294 of the Constitution of India vide this Dept. Notification No. 25177/H.dt. 9-7-1991 shall always sign the agreement on behalf of the Government.

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The writ petitioner was not a registered Pharmacist. According to the above Government circular, a person having previous experience of running a medical store would be given preference if he or she can furnish document in support of that, but will get lower priority vis-a-vis applicant who is a registered Pharmacist, In this case four applications were received including the present petitioner and Suit. Ranjita Das, O.P. No. 6. The present petitioner did not enclose any document. On the, other hands O.P. No. 6 Smt. Ranjita Das annexed a copy of the document showing that she passed the Diploma in Pharmacy. The Advisory Committee only recommended the case of O.P. No. 6 but ultimately from the order of the Government, Annexure-C, it is clear that the Government took the independent decision. Therefore, even if the recommendation of the Advisory Committee was not in accordance, with the procedure, the decision of the Government cannot be faulted as it took independent decision as would appear from Annexure-C.

Though the writ petitioner has alleged that Prabodha Kumar Das, proprietor of "Ranjita Medical Hall," is related to O.P. No. 6, this has been denied on affidavit by O.P. No. 6. In fact, O.P. No. 6 has given a genealogy and we are satisfied that there is no close blood relationship between them. We may state here that the present petitioner has filed a rejoinder to the additional affidavit filed by O.P. No. 6 giving a genealogy to show that there was blood relationship between Smt.

Ranjita Das and Prabodha Kumar Das, proprietor of Ranjita Medical Hall. We have examined the genealogy and we are constrained to state that there is no close blood relationship even if we accept the rejoinder. Though a general averment has been made that the President of the Advisory Committee is a blood relation to O.P. No. 6, which is supported by an affidavit, we have perused the affidavit and therefore we cannot come to the conclusion that there is any blood relationship as alleged.

7. In the Government letter dated 13-5-1993, Annexure-C, there is a specific clause that, other thing being equal, persons, who have crossed the age limit for entry into Government service, shall be given preference. Admittedly, the writ petitioner is aged about 24 years and she is within the age limit for entry into Government service whereas O.P. No. 6 has crossed the aforesaid age limit and is not entitled to any Government job.

8. For the reasons stated above, both the writ petitions are dismissed and the interim orders stand vacated. There shall be no order as to costs.

A. Pasayat, J.

9. I agree.