
(2002) 02 OHC CK 0023
In the Orissa High Court
Case No : O.J.C. No. 7036 of 1996

Smt. Supriti Patnaik

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 26-02-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2002) 93 CLT 466 : (2002) OLR 793 Supp

Hon'ble Judges : M. Papanna, J;B. Panigrahi, J

Bench : Division Bench

Advocate : Sourya Sundar Das, B.R. Das and B. Mohanty, for the Appellant; P.K. Patnaik, S.N. Senapati, S. Goenka, A.K. Dwivedy and S. Mukherjee and Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B. Panigrahi, J.—This writ petition assails the selection of opp. party No. 5 for opening a 24 hour medical store in the campus of Sub-divisional Hospital, Rairangpur under Annexure-5.

2. An advertisement was published in the local daily "Pragatibadi" inviting applications from female candidates for opening 24 hours Drugs Store inside the Campus of Sub-divisional Hospital, Rairangpur. It was stipulated therein that the applications should reach the office of the Chief District Medical Officer (in short C.D.M.O.) on or before 21st December, 1994 with all required documents by registered post. It was also mentioned in the said advertisement that the applications received before the advertisement or after 21.12.94 will not be entertained and incomplete applications and applications without requisite documents will also not be considered. The requirements in the Application Form for opening Drugs Store in the campus of Subdivisional Hospital were as follows :

(1) Name of the applicant :

(2) Address :

(a) Present :

(b) Permanent :

(3) Educational Qualification :

(4) Date of Birth :

(5) present profession :

(6) Whether the applicant is a registered Pharmacist and wants to open drugs store in his name :

(7) Whether the intention is to employ a registered Pharmacist on full time basis in the Drugs Store. If so mention the name and address of the concerned Pharmacist :

(8) Whether the applicant has any previous experience of running Medical Shop :

(9) Solvency status of the applicant :

I do hereby declare that the above informations, facts are true.

Signature of the applicant.

Documents to be submitted with the application forms : (1) Attested copy of Educational Certificate including H.S.C., (2) Attested copy of Residential Certificate from Tahasildar concerned, (3) Attested copy of Solvency Certificate from Tahasildar/Sub-Collector concerned as the case may be, (4.a) - do - Pharmacy pass certificate and Registration certificate. If candidate wants to open Drugs Store in his name, (b) A declaration to the effect that he is not appointed any where or engaged in any other Drugs Store as a qualified persons, (5) Attested copy of Pharmacist pass certificate and Registration Certificate in respect of the Registered Pharmacist (Qualified person) who will be employed in the Drugs Store, (6) Willingness of the Registered Pharmacist who will work in the Drugs Store to the effect that he will work in the drugs stores of the candidate concerned on full time basis. His signature should be attested by a Gazetted Officer, (7) The Registered Pharmacist who will be employed in the Drugs Store should furnish an undertaking to the effect that he is not employed any where or engaged in any other Drugs Store. (8) Documentary evidence in support of having previous experience of running Drugs Store if any by the candidate."

The petitioner, opp. party No. 5 and two other applicants submitted their applications along with necessary requirement to the C.D.M.O.

The petitioner, however, disputed that the opp. party No. 5 had ever applied to opp. party No. 4, C.D.M.O., for opening of 24 hours Medical Store in the campus of Subdivisional Hospital. It is further stated that although opp. party No. 5 did not possess any past experience and the column (8) of the Application Form "Whether the applicant has any previous experience of running Medical Shop"

was kept blank, yet she was selected ignoring the claim of the petitioner vis-a-vis-others. It has been further stated that one Sri Akshaya Kumar Si agreed to work as Pharmacist under opp.party No. 5, but he was then working at Vijaya Medical Store, Rairangpur and thereafter joined as Pharmacist at Chest Hospital at Malkangiri vide Order No. 68/35998 dt. 22.8.95, therefore, the application of opp. party No. 5 should have been regarded as "incomplete" and should have been rejected by Opp. party No. 1, Since there were allegations of mala fide against Opp. party No. 1 by selecting Opp. party No. 5, therefore, the selection process was entirely vitiated and accordingly the same should be declared invalid.

3. Opp. Party No. 5 has disputed the petitioner's averment by stating, inter alia, that the petitioner was only a house wife and she did not have any past experience as claimed. Past experience was treated as an additional qualification but not pre-requisite condition for opening a 24 hours Medical Store in the Subdivisional Hospital. The petitioner did not have any past experience much less 5 years as claimed by her. Since she was not selected by opp. parties 1 and 4, therefore, just to take away the rights of Opp. party No. 5 such speculative claim has been made in this writ petition.

4. Opp. party No. 1 filed its counter by stating that Opp. party No. 5 was selected as she was a Graduate and age-barred for any other Government service. It is further stated that she fulfilled all the criteria laid down by Government Order No. 19665/H Dt. 26.5.1993. The Director of Health Services recommended four names by his letter 2629 Dt. 8.3.1996. It is true that opp. party No. 5 did not enclose any past experience, but such experience was not the prerequisite conditions to be considered for giving permission to open a 24 hours Medical Store, therefore, opp. party No. 1 did not lay much importance on petitioner's application. On a comparative merit among the applicants it was found that opp. party No. 5 had satisfied all the conditions, therefore, she was chosen for opening a 24 hours Medical Store.

5. Mr. Das, learned Advocate appearing for the petitioner has submitted that in this case since opp. party No. 1 had acted in arbitrary and fanciful manner by sacrificing the principles of natural justice and fair play, therefore, this Court should interfere even in administrative decision taken by them. It is further submitted that it is no longer res integra to examine whether a particular policy decision taken by the authority is fair and genuine. It is only concerned with the manner in which those decisions have been taken. The decision maker must correctly understand the law and regulate the decision making process and must give effect to it. Irrationality arbitrariness, unreasonableness, whimsical decision must not be there in making a policy decision. Opp. Party No. 1 should also act in non-partisan and impartial manner. In a decision making process there is nothing like unfettered discretion immune from judicial reviewability. Courts stand between the executive and the subject, alert to see that discretionary power has not exceeded or misused. Therefore, in appropriate case the Court even can examine the decision making process if it is tainted with partiality, irrationality,

unreasonableness and also impropriety. The apex Court also in "the case of Tata Cellutak v. Union of India (1974) 6 SCC 651 has laid down the guidelines where the Court can interfere.

6. Mr. Das has also relied upon a decision reported in Vol. 81 " (Geetanjali Patnaik v. State of Orissa represented through its Secretary, Department of Health and Ors.). In so far as the principal enunciated by the Court there can hardly be any disputes. But the fact situation of that case was completely different. In the aforesaid case after the application was submitted there was total substitution by replacing the papers and other documents for which reason the Court had to reach at an inevitable conclusion that there was arbitrary lopsided and whimsical exercise of powers by the administrative machinery.

7. Then again reliance was placed in the judgment reported in Purna Chandra Panda Vs. Government of Orissa and Others, . There also the fact situation was quite different. The requirements in the above case was at variance with the requirements of the present case. In the above case the authorities made an advertisement of the applications from unemployed Pharmacists. It was an offer for an opportunity of self-employment by opening 24 hours Medical Store. Therefore, it was stated that all the conditions advertised at the time of inviting applications must have to be satisfied by the candidates and incomplete application filed thereto should be rejected. We have carefully gone through the judgment reported in M/s. Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and Others, But the facts stated in the aforesaid decision related to acceptance of tender and the principle discussed therein could have hardly any application to the present case.

8. In this case on going through the requirements, we found that the C.D.M.O., Mayurbhanj had invited applications for opening 24 hours Medical Store within the campus of Subdivisional Hospital. In item No. 8 it was shown that the documents to be submitted with the Application Forms, it had required the documentary evidence in support of having previous experience of running drugs store it any by the candidate. On a plain reading of item No. (8) we are of the opinion that such past experience was an additional qualification besides requirements in items (2) and (4-a) and (4-b) of the Application Form. The word "if any" positively connotes "in case that", "granting or supposing that" and "On condition that". Therefore, on a plain reading of the expression "if any" raises no manner of doubt that the previous experience of running drug store is not mandatory but an optional clause.

In this case on own showing of the petitioner it has come to our notice that she had claimed to have worked as a sales-lady in some medicine shop. That cannot be regarded as an additional/ optional qualification of past experience. She was merely an employee in some medicine store. If that certificate is excluded from being considered, then, we do not think the petitioner had some additional qualification compared to the other conditions. No mala fides having been attributed against opp. parties 1 and 4 in their decision making process,

therefore, we are unable to accept the petitioner's case for cancelling the opp. party No. 5's selection for opening 24 hours Medicine Store.

9. In case opp. party No. 1 feels any necessity for opening any other such medicine store for 24 hours, within the campus of Subdivisional Hospital, then, they may consider the case of the petitioner along with other two candidates and select such number of persons as they deem necessary for the purpose of 24 hours Medicine Store. However, we found, the petitioner has not been able to bring out any circumstance which would warrant our interference in cancelling the selection of Opp. party No. 5.

Accordingly the writ petitioner being devoid of merit is dismissed.

M. Papanna, J.

I agree.