
(2009) 04 OHC CK 0051
In the Orissa High Court

Soubhagya Kumar Nayak

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 09-04-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 357, 448

Citation : (2009) 108 CLT 120 : (2008) 108 CLT 120 : (2009) 1 OLR 933

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Judgement

M.M. Das, J.—Heard Mr. Mohanty, learned Counsel for the petitioner and Mr. N. K. Das, learned Counsel appearing for opposite party No. 5 as well as the learned Counsel for the State.

2. The petitioner is continuing as Storage Agent in Bamara Block. The opposite party No. 5 made an application to be appointed as Storage Agent in the said Block. He being selected, the petitioner has preferred this writ petition challenging the selection of opposite party No. 5 on the ground that on the date when he made the application for being appointed as Storage Agent, he was disqualified to be appointed as such, as a charge-sheet was filed against him in a criminal proceeding vide G.R. Case No. 275 of 2004 for alleged commission of offence under Sections 448/357 I.P.C. The charge-sheet filed on 5.12.2004 has been annexed to the writ petition as Annexure-3 series. The application for being appointed as Storage Agent was made by the opposite party No. 5 on 18.11.2006, when the said criminal case was pending disposal. The guidelines under Annexure-4 in Clause-3 (vii) provides that anybody who has been charge-sheeted or convicted in last five years for any criminal offence under the I.P.C, or any other offence constituting moral turpitude, would be ineligible to be appointed as Storage Agent.

3. It is an admitted case that pursuant to the guidelines and advertisement, the application was made by the opposite party No. 5. It is, therefore, clear that the opposite party No. 5 was not eligible to make the application for being appointed

as Storage Agent.

4. Though Mr. Das, learned Counsel appearing for opposite party No. 5 draws the attention of the Court to Clause-15 of the O.P.D.S. (Control) Order, 2008 and submits that if a license is granted, it can only be cancelled if the licensee has been convicted within last five years under any criminal offence under the I.P.C. or any other offence constituting moral turpitude and the petitioner having already been acquitted in the criminal case should not be considered ineligible to be appointed as Storage Agent, I am not inclined to accept the said contention for the simply reason that the opposite party No. 5 made the application for being appointed as Storage Agent pursuant to the guidelines which were issued on 23.10.2006 i.e. much prior to the date when O.P.D.S. (Control) Order, 2008 came into force. I, therefore, find substance in the submission of Mr. Mohanty, learned Counsel appearing for the petitioner that the opposite party No. 5 was not eligible to make the application for being appointed as Storage Agent in Bamara Block.

5. Appointment of opposite party No. 5, if made, stands annulled. As Mr. Das, learned Counsel appearing for opposite party No. 5 submits that the said opposite party No. 5 has already deposited Rs. 1.00 lakh as security amount for being appointed as Storage Agent, I direct that the said amount already deposited shall be refunded to the opposite party No. 5 within a period of three weeks from today.

6. The writ petition is, accordingly, disposed of.

7. Urgent certified copy of this order be granted on proper application.