

(2003) 02 OHC CK 0052

In the Orissa High Court

Case No : Writ Petition (C) No. 1442 of 2003

Sri Krushna Chandra Sahoo and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 24-02-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2003) 1 OLR 361

Hon'ble Judges : P.K. Misra, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : M.K. Das, Sidheswar Mallik and Rama Chandra Jena, for the Appellant; K.C. Kar, A.S.C., for the Respondent

Judgement

1. Heard Mr. M.K. Das, learned counsel for the petitioners and Mr. K.C. Kar, learned Addl. Standing Counsel for opp. parties 1 to 4.

2. The case of the petitioners are that they are all functioning as Sub-wholesalers in kerosene oil in different places under Marsaghai Block, Kendrapara district as per the details given herein below :

----- "Name of petitioners Place of Business ----- 1. Krushna Ch. Sahoo Bhusaranga 2. Debabrata Swain Marsaghai 3. Kunal Kumar Swain Silipur 4. Bishnu Ch. Routray Gaudagaon". -----

3. Under the circulars dated 2.6.1975 of the Government of Orissa, Food, Supplies and Consumer Welfare Department (Annexure-1 to the writ petition), dated 5.2.1980 of the Government of Orissa, Food and Civil Supplies Department (Annexure-2 to the writ petition) and dated 22.9.2000 of the Government, of Orissa, Food, Supplies and Consumer Welfare Department (Annexure-3 to the writ petition) Sub-wholesalers were not to be appointed where wholesale agents of kerosene oil are already functioning and if any Sub-wholesaler was to be appointed, he was to be immediately eliminated and no Sub-wholesaler is to be

appointed at any place, except under extraordinary circumstances and with the prior approval of the Government. The grievance of the petitioners in this writ petition is that despite the aforesaid circulars, the Collector, Kendrapara by his letters dated 1.10.2002 and 21.11.2002 in Annexures-4 and 5 to the writ petition has forwarded the applications of Shri Dambarudhara Sahoo and Shri Prasanta Kumar Padhiary for appointment as Sub-wholesalers of kerosene oil at Manikunda and Baulagaon respectively in Marsaghai Block. Aggrieved, the petitioners have filed this writ petition with a prayer to direct the opp. parties not to appoint other kerosene oil Sub-wholesalers in Marsaghai Block. The petitioners have also filed a Misc. Case for interim order directing the opp. parties not to appoint further Sub-wholesaler dealing in Kerosene oil in the Marsaghai Block.

4. Mr Das, learned counsel for the petitioners vehemently submitted that since the appointments of the additional Sub- wholesalers in Marsaghai Block, as recommended in Annexures 4 and 5 to the writ petition, by the Collector, Kendrapara will be contrary to the aforesaid circulars of the Government, this Court, while issuing notice should pass an interim order to the effect that there shall be no appointment to the additional Sub- wholesaler for kerosene in the Marsaghai Block.

5. Mr K.C. Kar, learned Addl. Standing Counsel, on the other hand, submitted that the writ petition is premature inasmuch as no appointment has been made on the basis of the recommendation of the Collector in Annexures-4 and 5 to the writ petition.

6. We find from the circulars and, in particular, the latest circular dated 22.9.2000 in Annexure-3 to the writ petition that appointment of Sub-wholesaler at any place is to be made only in extraordinary circumstances and that too, with the prior approval of the Government. The extraordinary circumstances under which such appointment should also be made has also been mentioned in the said circular. Hence, the Government will have to consider whether the appointment of Sub-wholesaler, if at all, is justified on the basis of extraordinary circumstances. In our opinion, no useful purpose will be served in keeping the writ petition pending and passing an interim order.

7. We, therefore, dispose of this writ petition with the direction that while considering the cases of the persons mentioned in the letters dated 1.10.2002 and 21.11.2002 of the Collector, Kendrapara in Annexures-4 and 5 to the writ petition for appointment of Sub-wholesalers for distribution of kerosene oil, the Government will keep in mind the aforesaid stipulations in the circulars of the Government in Annexures-1, 2 and 3 and pass orders. In case, the petitioners are still aggrieved, it will be open for the petitioners to move this Court again.

8. With the aforesaid directions, the writ petition stands disposed of.