

Prafulla Kumar Behera Vs. State of Orissa and Five ors.

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Court : Orissa

Decided On : Mar-30-2009

Reported in : 2009(I)OLR824

Judge : M.M. Das, J.

Appellant : Prafulla Kumar Behera

Respondent : State of Orissa and Five ors.

Advocate for Pet/Ap. : Mr. M.K. Das, Mr. Das

Judgement :

ORDER

M.M. Das, J.

1. Heard Mr. M.K. Das, learned Counsel for the petitioner and Mr. Patnaik, learned Counsel appearing for opp.party No. 5 as well as the learned Counsel for the State.

2. The petitioner alongwith opp. parties 5 and 6 made applications for being appointed as Storage Agents pursuant to an advertisement made by the Government in Chhatrapur Block in the district of Ganjam justifying appointment of three Storage Agents as per the guidelines.

3. Mr. Das, learned Counsel for the petitioner submits that when the petitioner made an application for appointment as Storage Agent, he has attached thereto his solvency certificate. After consideration of the said applications, the petitioner as well as opp. parties 5 and 6 were recommended by the Collector, Ganjam to be appointed as Storage Agents at Chhatrapur Block. The grievance of the petitioner is that even though Chhatrapur Block justifies appointment of three Storage Agents, the Orissa State Civil Supplies Corporation Ltd. appointed two Storage Agents leaving behind the petitioner.

4. On a complaint received from the local Member of the Legislative Assembly, the Collector, Ganjam on enquiry came to a finding that the petitioner is not financially strong to be appointed as Storage Agent and withdrew his recommendation. The petitioner challenges the action of the opp. parties in not appointing him as Storage Agent in respect of Chhatrapur Block, mainly on the two grounds. Firstly, once the Collector verifying the solvency certificate of the petitioner recommended his case, there is no further power vested with the Collector to withdraw such recommendation. Secondly, even conceding that the Collector has such power, since the petitioner produced his solvency certificate issued by the Sub-Collector on 20.11.2006, the Collector could not have come to a finding that the petitioner is not financially sound to be appointed as Storage Agent without basing on any material available on record.

5. Mr. Das, learned Counsel for the petitioner further submits that the opp.party No. 5 is also not eligible to be appointed as Storage Agent, since a criminal case in which charge-sheet has been filed, is pending against him before the learned S.D.J.M., Chhatrapur. Mr. Das draws the attention of the Court to Sub-clause (vii) of Clause-3 of the guidelines annexed to the writ petition as Annexure-1.

6. It appears that without making due enquiry solely basing on the allegation made by the M.L.A., the Collector has come to a conclusion that the petitioner is not financially sound to be appointed as Storage Agent inspite of the fact that he has submitted his solvency certificate along with his application, on due consideration of which the Collector has recommended his case.

7. Learned Counsel for the State, on the contrary, submits that the State has annexed the enquiry report as at Annexure-B/1 to its counter affidavit filed in this case showing that the finding of the Collector was based on such report given by the Sub-Collector (SDM).

8. I also find that admittedly, a charge-sheet has been filed against the opp.party No. 5, upon which a G.R. Case has been instituted and pending disposal. As per the aforesaid clause of the guidelines, the opp.party No. 5 is not eligible to be appointed as Storage Agent, if, in fact, the case is still pending.

9. Mr. Patnaik, learned Counsel appearing for opp.party No. 5, per contra, argues that on account of a civil dispute, a complaint case was filed and pursuant to the order of the learned Magistrate, the matter was investigated into by the police, though, no doubt, it is admitted that the charge-sheet has been filed in the meanwhile. He further argues that during course of investigation, the Officer-in-charge, Chamakhandi P.S. has written a letter to the Sub-Collector intimating him that P.S. Case No. 106 of 2005 was registered as I.C.C. No. 10 of 2005 by the learned S.D.J.M., Chhatrapur, which relates to a land dispute and directed the police to investigate into the said allegation.

10. Be that as it may, since the guidelines in the aforesaid clause provides that in the event the charge-sheet is filed and pending for the last five years, the person is not eligible to apply for being appointed as Storage Agent.

11. In this view of the matter, the case is remitted back to the Collector, Ganjam to consider the case of the petitioner without being influenced by his previous observation that the petitioner is not financially sound to be appointed as Storage Agent and recommend his case for being appointed as such to the Corporation. With regard to appointment of opp.party No. 5, it is directed that in the event after submission of the charge-sheet, the trial of the G.R. Case has not been proceeded with, since it is stated at the Bar that three Storage Agents can be appointed at Chhatrapur Block, the case of opp.party No. 5 shall also be considered provided the Corporation is willing to appoint three Storage Agents for Chhatrapur Block.

12. With the aforesaid observations and directions, the writ petition is disposed of.

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

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