

ORISSA HIGH COURT : CUTTACK

W. P.(C) NO. 15083 OF 2008

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Sri Ranjan Kumar Das Petitioner

-Versus-

State of Orissa and others Opp. Parties

For Petitioners : M/s. S.P.Sarangi,
P.P.Mohanty & P.K.Dash.

For Opp. Parties : Addl. Government Advocate
(For O.Ps 1 and 3.)

Mr. Banamali Sahu
(For O.P.No.2)

M/s. B.N.Mohapatra &
P.K.Singh.
(For O.Ps 4 and 5).

Decided on 18.08.2009.

P R E S E N T:

THE HONOURABLE SHRI JUSTICE M. M. DAS

M.M. Das, J.

The petitioner, for his non-selection as a Storage Agent by the Managing Director, Orissa State Civil Supplies Corporation Ltd. – opp. party no. 2 (hereinafter referred to as “the Corporation”) at Hatadihi Block in the district of Keonjhar has approached this Court in the present writ petition for appropriate direction.

2. It is the case of the petitioner that his name was recommended by the Collector, Keonjhar – opp. party no. 3 to be appointed as a Storage Agent. According to him, as per the guidelines dated 28.10.2006 issued by the Corporation for appointment of Storage agent, the Collector of the district is the competent authority to make recommendations for such appointment for different Blocks/NACs/Municipal areas. The Collector for such recommendation has to conduct an enquiry through the A.D.M./Sub-Collector or any other officer regarding the correctness of the application and as per the eligibility criteria and disqualification norms, he has to recommend the name of the persons for appointment as Storage Agents. The petitioner has further contended that once a person is recommended by the Collector, the Corporation has to accept him and select the same person as the Storage Agent for the respective Block and any variance with the recommendation can be made by the Corporation assigning valid reasons for the same. In the instant case, according to the petitioner, as his name was duly recommended for being appointed as a Storage Agent in Hatadihi Block, the Corporation without assigning any reason has rejected his application and on the other hand, has appointed the opp. party no. 5 as the Storage Agent who was not recommended by the Collector.

3. A counter affidavit has been filed by the opp. party no. 5, inter alia, stating that in terms of the guidelines, the petitioner along with some others applied to the Collector, Keonjhar for being recommended to be appointed as the Storage Agents. While the Collector recommended the case of the petitioner to the Corporation, the opp. party no. 5 was recommended by the public representatives for being appointed as Storage Agent and there was no such recommendation by any public representative in favour of the petitioner at any time. The case of the opp. Party no. 5 was considered in terms of Clauses - VI and VII of the guidelines by the Corporation for appointment of Storage Agent. The opp. party no. 5 has further asserted that Clause – VI of the guidelines provides that the Collector should give due weightage to the view of the Hon'ble M.Ps/M.L.As and other peoples' representative of the respective areas. In the instant case, Corporation gave weightage to the recommendation of the peoples representative and appointed the opp. Party no.5. The opp. party no. 5 has also deposited Rs. 1.00 lakh towards security deposit on 31.10.2008 in favour of the District Manager of Corporation and thereafter has deposit all relevant documents for execution of the agreement as ordered by the Collector on 16.10.2008. The opp. party no. 5 also claims to have spent huge amount for the purpose of construction of go-down and other requirements. It is

also stated in the counter affidavit that under Annexure-C/5, a penalty was imposed on Smt. Nirmala Das, who was functioning as a Storage Agent and is the mother of the petitioner and, hence, the petitioner is disqualified for being appointed as a Storage Agent.

The Corporation has also filed a counter affidavit, inter alia, stating that upon receipt of the applications by the Collector, the Sub-Collector was directed to cause an enquiry on the authenticity of the applications and on his submitting a report, the Collector recommended the name of the petitioner and the opp. party no. 4 and one Jogendra Behera on the basis of the same. After receipt of the recommendation of the Collector, Corporation selected the opp. parties 4 and 5 for being appointed as Storage Agents in Hatadihi Block on the condition that in case there are complaints against the newly appointed Storage Agents, the same should be enquired into and the enquiry report should be submitted to the Managing Director of Corporation. On obtaining clearance from the Managing Director, the appointment order is to be issued. In view of the interim order passed in this case, no appointment order has yet been issued in favour of opp. parties 4 and 5 and there is no infirmity or illegality in selecting the opp. parties 4 and 5 to be appointed as Storage Agents.

4. A rejoinder affidavit has been filed by the petitioner to the counter affidavit of the opp. party no. 5. The allegation that a penalty was imposed on the mother of the petitioner, who was/is functioning as a Storage Agent as at Annexure-C/5 to the counter affidavit of opp. Party no.5, has not been denied in the rejoinder affidavit.

5. Clauses-VI and VII of the guidelines read as follows:

“VI. RECOMMENDATION OF THE COLLECTOR:

The Collector, shall after careful consideration of the verification report with respect to norms laid down in the guidelines and observations on eligibility/disqualification send his/her recommendation to the OSCSC Ltd. Collector should give due weightage to the views of Hon’ble MPs/Hon’ble MLAs and other elected peoples’ representatives of the respective areas.

Normally an applicant should not be recommended for appointment in more than one block/ULB.

Collector may also recommend the name of any co-operative organization/Govt. Corporation including OSCSC Ltd./SHG/Women Self Help Group provided they satisfy all the conditions stipulated in the guidelines. In case of WSHGs, appropriate security to the satisfaction of the OSCSC Ltd. may be substituted in place of solvency/bank deposit.

Recommendation of the Collector and peoples’ representatives shall be given due weightage by the Selection Committee of the OSCSC Ltd.

VII. RIGHTS OF THE OSCSC LTD.

(1) The Board of Directors reserves the right of selecting any person, Co-operative organization, Govt. Corporation or Self Help Group etc. on the recommendation of the

Collector. Board of Directors reserves the right of selection/appointment of storage agents even at variance with the recommendation of the Collector.

- (2) The OSCSC Ltd. reserves the rights of undertaking "Departmental Operation" in any area of the State in place of a private storage agent whenever and wherever situation so warrants, at the sole discretion of the Corporation and the storage agents shall be bound to hand over all his closing stock to officer designated for the departmental operation as and when directed.

Clause-V (3) provides the disqualification clauses in which sub-clause (3) (ix) states that more than one person from a family shall not be appointed as a Storage agent. This Court, in order to appreciate the disputed question, called for the original record from the Corporation. From the same, it appears that for Hatadihi Block, the Collector recommended the name of the petitioner, the opp. party no. 4 as well as one Jogendra Behera. The opp. party no. 5 was recommended by the Member of Parliament (Lok Sabha), Keonjhar as well as Sri Mohan Charan Majhi, M.L.A. The matter was placed before the Board of Directors of the Corporation in its 139th meeting held on 8.10.2007 along with the other agenda of items and the Board resolution, in item no.3, reads as follows:-

"ITEM NO.3: Appointment of storage agents.

3.1: This item was placed in the last meeting of the Board held on 18.09.2007. Board had approved the committee constituted at corporation level with the members namely Sri

Duryodhan Nayak, F.A. & C.A.O. Chairman, (2) Sri P.K. Das, GM (Admn.) I/C. Member, (3) Sri B.C. Mohapatra, GM (PDS) Member, and desired that this committee should closely examine the recommendations of the Collector, the local MLA, Minister of the district, MPs and other PRIs at the time of preparing the draft list for appointment of private storage agents for lifting foodgrains and other essential commodities under public distribution system. While preparing the list, the committee should consider the following aspects:-

- (1) The list of valid applications forwarded by the Collectors.
- (2) The list of applications rejected by Collectors at their level may be collected and verified.
- (3) Confirmation from all the Collectors/CSO/ cum-D.Ms. should be obtained with regard to the fact that nothing adverse has been detected against the existing storage agents whose names have been recommended by collectors or other public representatives. In case of such irregularity is reported, the name of such storage agent, even if recommended by Collector/other public representative, should be excluded from the draft list.
- (4) Population norm should be rightly adhered to while recommending for requisite no. of storage agents from the valid applications.

3.2. The Chairman of the Committee placed the draft list of storage agents prepared by the committee basing on the observations of the Board and the guideline framed by Government, Food, Supplies and consumer Welfare Department. He submitted before the Board that the committee, while preparing the draft list, have given due weightage to the recommendations of the Collectors, local MLAs and other Public Representatives. In some cases where there is no recommendation of Collector/PRIs, but valid applications are available, the committee have recommended the names of valid applicants.

3.3. Board, after discussion on different aspects, made some random scrutiny on the draft list with regard to the Districts of Bolangir, Keonjhar, Koraput and Puri and expressed their overall satisfaction. During scrutiny, Board made some modifications to the list keeping in view the population norm (adding 10% over and above 2001 census figure) and recommendations of local MLAs and other political representatives. After such minor modifications to the list, Board approved the list. The final list approved by Board is at Annexure-I. Board decided to send this list for approval of Government in F.S. & C.W. Department immediately as required by Government guidelines.

The meeting was over with vote of thanks to the Chair.

Sd/-
Company Secretary.”

According to the said resolution, in case of Hatadihi Block, the opp. parties 4 and 5 were selected to be appointed as Storage Agents.

6. Examining the reasons which have been stated by the Board of Directors of the Corporation in selecting the opp. parties 4 and 5 as Storage Agents of Hatadihi Block in the district of Keonjhar, I do not find any perversity, illegality or arbitrariness in the said decision. I also find that reasons have been assigned by Corporation for selecting the opp. parties 4 and 5. This action of Corporation being an administrative act, unless it is shown that such action is ex facie arbitrary or contrary to law, it should not be lightly interfered with nor should be subjected to judicial

review while exercising jurisdiction under Articles 226 and 227 of the Constitution of India.

7. In the result, therefore, there is no merit in the writ petition, which is accordingly dismissed, but in the circumstances, without costs. All pending Misc. Cases also stand disposed of.

The interim order passed earlier stands vacated.

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M.M. Das, J.

*Orissa High Court, Cuttack.
August 18th, 2009/Biswal.*
