

# ORISSA HIGH COURT: CUTTACK

## **W.P.(C). No.4656 of 2014**

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

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Soumitri Panda

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Petitioner

**-versus-**

State of Orissa &  
others

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Opposite parties

For petitioner : M/s. J.K. Rath (Sr. Adv) & D.N. Rath

For O.P No.1 : Additional Standing Counsel

For O.P. Nos.2 & 3 : M/s. K.R. Mohapatra, S. Ghosh & A.R.  
Panigrahi

P R E S E N T :

**THE HONOURABLE DR. JUSTICE B.R.SARANGI**

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Date of hearing: 11.02.2015 : judgment : 27.02.2015

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***Dr. B.R.Sarangi, J.***

The petitioner who is working as the Manager (HRM) under Nilachal Ispat Nigam Limited, Industrial Estate, Kalinga Nagar Industrial Complex, Duburi, Jajpur has filed this application seeking to quash the order passed by opposite party no.2 communicated to him by opposite party no.3 on 26.02.2014 vide Annexure-3 directing to explain as to why appropriate action as deemed fit will not be taken against him for non submission of valid proof of his qualification.

2. The factual matrix of the case is that Nilachal Ispat Nigam Limited (in short hereinafter referred to as NINL) is a Public Limited Company

which was promoted by MNTC, a Central Government undertaking having majority share and the State Government the 2<sup>nd</sup> largest share, like other Government agencies such as Industrial Promotion and Investment Corporation of Orissa Ltd (in short, IPICOL). The petitioner after his graduation in Commerce from Utkal University has completed his MBA Course from the Institute of Business Administration and Management, New Delhi under Distance Course. Besides, he had completed one year Diploma in Computer Application and Data Processing. The petitioner coming to know that opposite party no.2-Company has started operating in the State of Orissa, accordingly he made an application for consideration of his case to give him suitable appointment to any post. His application was considered by opposite party no.2 and the petitioner was called upon to appear in the interview and having qualified he was engaged as a Trainee Executive. Thereafter, he was appointed as Junior Executive and accordingly he joined in the said post on 04.11.1997. His service was confirmed against the said post on completion of probation period vide order dated 03.01.2001. He was promoted to the post of Junior Manager (HRD) on 20.07.2002 on probation for a period of six months and thereafter he was regularised in the post of Junior Manager (HRD) vide order dated 03.04.2003. Again he was promoted to the post of Assistant Manager (Personnel) on 09.12.2004 on probation and was confirmed in the said post and was promoted to the post of Deputy Manager and thereafter to the post of Manager vide order dated 03.10.2011. The petitioner had acquired MBA qualification from an institution which had not been approved by AICTE, but subsequently the said institution had obtained AICTE approval. While he was so continuing in his promotional

post, he was communicated vide Annexure-3, the letter dated 26.02.2014 wherein it was specifically stated that while issuing appointment letter on 18.10.1996 the petitioner was categorically informed that MBA Degree submitted in support of his qualification requires confirmation of recognition by AICTE and he was given one month's time to submit the necessary documents in support of AICTE recognition of his qualification. Though his service was confirmed and subsequently he was promoted to the higher levels from time to time, he had failed to give documentary evidence in support of recognition of his MBA Degree by AICTE. Therefore, the High Power Committee was constituted to investigate into the alleged irregularities in recruitment of some employees including the petitioner. The qualification of MBA acquired by the petitioner having not been recognized by AICTE, he has been called upon to show cause as to why appropriate action as deemed fit will not be taken against him for non-submission of valid proof of his qualification. Hence, this writ petition.

3. Mr. J.K. Rath, learned Senior Counsel appearing for the petitioner strenuously urged that the petitioner has an unblemished career basing upon which he was promoted to different higher posts, but with an ulterior motive, the High Power Committee has conducted an enquiry and the enquiry report has been prepared behind his back basing upon which explanation has been called for from him vide Annexure-3, that itself is arbitrary and unreasonable. Therefore, he seeks to quash the same. It is further urged that the request of the petitioner to supply the copy of the so-called report of the High Power Committee basing upon which explanation

has been asked under Annexure-3 has not been considered reasonably and therefore the petitioner has been denied opportunity to reply effectively the allegation contained in the show-cause notice and to prove his innocence. Without giving such opportunity, calling for explanation is vitiated. Therefore, he seeks for interference of this Court. He further urged that if this Court is not inclined to entertain this application, interim protection to the petitioner be granted till consideration of the reply filed by the petitioner to the opposite parties. To substantiate his contention, learned Senior Counsel appearing for the petitioner has relied upon ***Oryx Fisheries Private Limited v. Union of India and others***, (2010) 13 SCC 427.

4. Per contra, Mr. K.R. Mohapatra, learned counsel for opposite party no.3 strenuously urged that it was specifically stated in his offer of appointment that MBA Degree qualification required confirmation of recognition by AICTE and he was given one month time to submit necessary documents in support of recognition of his MBA Degree by AICTE. Subject to submission of the aforesaid document his service was to be confirmed on 24.11.1997. The petitioner having not provided the confirmation of recognition by AICTE with regard to the institution from which he has been granted MBA Degree, the petitioner was called upon to explain as to why suitable step shall not been taken against him for the said reason. Therefore, the application filed by the petitioner is premature one and as such, the writ petition is not maintainable. In addition to that he justified the action of the authority indicating that on the basis of the allegation of irregularities and unethical practices done by the petitioner without taking immediate action

against him the High Power Committee was constituted to cause an enquiry into such allegation/unethical practices. The High Power Committee observed that the petitioner has acquired regular degree of MBA from an institution which had not been recognized by the AICTE. Consequence thereof he has been called upon to explain as to why an appropriate action shall not be taken against him. By this process the authorities have not committed any irregularity or illegality inasmuch as no finality has been reached whether a disciplinary action will be initiated against him or not at this stage rather he has been given ample opportunity in compliance with the principles of natural justice. Instead of filing his explanation, the petitioner filed this writ petition which is absolutely misconceived one. Therefore, learned counsel for opposite party nos.2 & 3 states that the writ petition should be dismissed in limine.

5. Considering the above facts pleaded by the parties and after perusing the records it is seen that with regard to the factum of appointment of the petitioner and consequent promotion given to him there is no dispute, but only dispute is with regard to his MBA qualification which the petitioner acquired from an institution which had not been recognized by AICTE. Due to non-submission of testimonies with regard to recognition of the institution from which the petitioner acquired of MBA Degree by the AICTE, the action taken in calling for explanation in Annexure-3 cannot be stated to be an illegal one rather it is well within the competence of the authority to issue such letter calling upon for explanation. Initially the petitioner was engaged as a Trainee Executive. Thereafter, he was appointed as Junior Executive and

accordingly he joined in the said post on 04.11.1997. His service was confirmed against the said post on completion of probation period vide order dated 03.01.2001. He was promoted to the post of Junior Manager (HRD) on 20.07.2002 on probation for a period of six months and thereafter he was regularized in the post of Junior Manager (HRD) vide order dated 03.04.2003. Again he was promoted to the post of Assistant Manager (Personnel) on 09.12.2004 on probation and was confirmed in the said post and was promoted to the post of Deputy Manager and thereafter to the post of Manager vide order dated 03.10.2011. The petitioner had acquired MBA qualification from an institution which had not been approved by AICTE, but subsequently the said institution had obtained AICTE approval. While he was so continuing in his promotional post, the letter dated 26.02.2014, Annexure-3 was issued to him wherein it was specifically stated that while issuing appointment letter on 18.10.1996 the petitioner was categorically informed that MBA Degree submitted in support of his qualification required confirmation of recognition by AICTE and he was given one month's time to submit the necessary documents in support of AICTE recognition of his qualification. Though his service was confirmed and subsequently he was promoted to the higher levels from time to time, he had failed to give documentary evidence in support of recognition of his MBA Degree by AICTE. Therefore, the High Power Committee was constituted to investigate into the alleged irregularities in recruitment of some employees including the petitioner. The qualification of MBA acquired by the petitioner having not been recognized by AICTE, he has been called upon to show cause as to why appropriate action as deemed fit will not be taken against him for non-

submission of valid proof of his qualification. In view of such observation made by the High Power Committee, the petitioner was called upon by the impugned letter under Annexure-3 dated 26.02.2014 to explain as to why appropriate disciplinary action shall not be initiated against him which the petitioner received the same day and without giving any explanation, approached this Court by filing the present writ petition.

6. In ***Oryx Fisheries Private Limited v. Union of India and others***, (2010) 13 Supreme Court Cases 427, the apex Court held that it is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show-cause notice. A show-cause notice is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.

Much reliance is placed on paragraphs 31 and 32 of the judgment which is as follows:

“31. It is of course true that the show-cause notice cannot be read hypertechnically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show-cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show-cause notice”.

There is no dispute with regard to the law laid down by the apex Court in **Oryx Fisheries Private Limited** (supra). It is to be examined whether the ratio is applicable to the facts of the present case or not. Because it is well settled principle laid down by the apex Court in **State of Orissa v. Sudhansu Sekhar Mishra**, A.I.R 1968 SC 647 that each case has to be decided on its own facts and circumstances. Applying the said principle to the present case, Annexure-3 is only a notice to show cause to allegation made therein on the basis of prima facie allegation made by High Power Committee. Till date there is no decision to the extent that the authorities have decided to initiate disciplinary proceeding against the petitioner. Therefore, if the High Power Committee in course of enquiry found that the MBA Degree was obtained by the petitioner from an institution which had not been recognized by AICTE, correctness of such findings is to be decided only after the petitioner is given an opportunity to explain the findings arrived at by the High Power Committee which is in compliance with the principles of natural justice and that is what has been done by Annexure-3. In this case instead of giving explanation, the petitioner has approached this Court invoking the jurisdiction under Article 226 of the Constitution of India which is absolutely a misconceived one rather the writ petition is a premature one.

7. The apex Court in **Charan Singh v. Registrar, Co-operative Societies, Punjab**, AIR 1977 SC 1821, **Dr. Sarana V. University of Lucknow**, AIR 1976 SC 2428, **Chandra Shekhar v. State of Orissa**, AIR 1972 SC 486, **Union of India v. A.N. Saxena**, AIR 1992 SC 1233 held that the Supreme Court or a High Court may also dismiss the petition filed by the petitioner if it is filed at a premature stage and no final action adversely affecting the rights of the petitioner is taken. Ordinarily, a Court will confine



its decision to the existing facts and will not enter into assumptions and inferences. If the petitioner approaches the Court at an earlier and premature stage, the Court may dismiss the petition on that ground alone without entering into the merits of the matter.

8. In **Charan Singh** (supra) the Managing Director of the Bank initiated departmental proceedings against the petitioner and issued a show cause notice. The petitioner challenged the legality of the proceedings by filing a petition. It was contended by the Bank that the petition was not maintainable since no final action had been taken against the petitioner.

Upholding the contention, the Court observed that no punitive action had been taken against the petitioner. "It is difficult to state, apart from speculation, what the outcome of the proceedings will be".

9. In **Dr. Sarana** (supra) the petitioner approached the High Court by filing a petition under Article 226 of the Constitution against the recommendation made by the Selection Committee in favour of one of the two candidates. It was not even scrutinized by the Executive Committee. It was for the Executive Committee either to accept the recommendation made by the Selection Committee or to reject it. Thus, the petition filed against such a recommendation was held to be premature.

10. The Constitution Bench of the Supreme Court in **Calcutta Discount Co. Ltd v. Income Tax Officer, Companies District 1<sup>st</sup>, Calcutta & Anr.**, AIR 1961 SC 372, observed as under:

"It is well settled, however, that though the writ of prohibition or certiorari will not be issued against an

executive authority, the High Courts have power to issue, in a fit case, an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority, acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Court, it is well settled, will issue appropriate orders or directions to prevent such consequences”.

The same view has taken in a plethora of judgments of the apex Court. But in ***State of Uttar Pradesh v. Brahm Datt Sharma & Anr.***, AIR 1997 SC 943, the Supreme Court held as follows:

“When a show cause notice is issued to a Government servant under the statutory provision seeking upon him to show cause ordinarily the Government servant must place his case before the Authority concerned by showing cause and the Court should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. An order violating fundamental principles of law and causing substantial injustice to a party may also be examined in a writ jurisdiction”.

11. In ***Special Director & Anr. Vs. Mohd. Ghulam Ghouse & Anr.***, AIR 2004 SC 1467, the Supreme Court held as follows:

“where the show cause notice is founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issue also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court”.

12. Referring to ***Calcutta Discount Co. Ltd*** (supra), ***State of Uttar Pradesh*** (supra) and ***Special Director & Anr*** (supra), it is made ample clear that at the stage of show cause, if the authority has lacked jurisdiction then only the Court may interfere with the same. Otherwise at the initial stage the Court should refrain from interfering with the matter as no final action is under challenge. Therefore, the application itself is a premature one. Applying the said ratio decided in the aforementioned cases (supra) to the present context nothing has been produced before this Court to

indicate that the authority which has issued impugned order has no jurisdiction to issue such letter calling upon the petitioner to explain with regard to commission or omission found in course of enquiry made by the High Power Committee nor has any pleading to that effect been advanced in the writ petition. On the other hand in apprehension of initiation of disciplinary proceeding against the petitioner, he has approached this Court by filing this writ petition.

13               The contention raised by Mr. J.K. Rath, learned Senior Counsel appearing for the petitioner to the effect that this Court be inclined to give interim protection to the petitioner till submission of his explanation, such contention cannot sustain in the eye of law in view of the ratio decided in ***The State of Orissa V. Madan Gopal Rungta***, A.I.R. 1952 SC 12. The Constitution Bench of the apex Court held that Article 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application as the High Court has purported to do so. An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in suit or proceeding. Therefore, since the writ petition is premature, there is no justification to grant interim relief till the matter is decided by the authority on the explanation to be submitted by the petitioner. The submission made by the learned Senior Counsel appearing for the petitioner is a misconceived one and cannot sustain on the basis of law decided. Accordingly, the same is rejected.

14. In view of such position, the writ petition is not maintainable as the same is premature one. This Court refrains from making any observation with regard to the merits of the case at this stage. Since the petitioner without submitting his explanation approached this Court by filing this writ petition without any valid and justifiable reasons, the same is premature one and therefore, this Court is not inclined to interfere with the same.

15. Accordingly, the writ petition is dismissed.

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***Dr.B.R.Sarangi, J.***

Orissa High Court, Cuttack  
The 27<sup>th</sup> February, 2015, Alok.