

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C). No.6909 of 2010

Jura Padhy

.... ***Petitioner(s).***
Mr.B.Sahoo, Advocate

-versus-

***Agency Marketing Cooperative
Society Ltd & Aanr.***

.... ***Opposite Party(s)***
Mr.B.C.Panda, Advocate
(For O.P.No.1)
Mr.U.K.Sahoo, ASC

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
20.09.2022**

Order No.
07.

1. Heard Mr.Sahoo, learned counsel appearing for the petitioner and Mr. U.K.Sahoo, learned Additional Standing Counsel for the State. In spite of sufficiency of notice and appearance of a set of counsel for the opposite party no.1, nobody is present to contest the matter.
2. The case has a checkered career involving audit report, it appears a surcharge proceeding was initiated against the petitioner vide Surcharge Case No.98/2001 subsequently registered as new Case No.98/2001(A). This matter having been disposed of holding ex-Secretary and President including the petitioner both are equally liable for the total amount of Rs.48,35,459.40, appropriate direction was given to recover the amount along with interest accordingly. Being aggrieved by such order, it appears, the petitioner, ex-Secretary moved T.A.No.75 of 2005 before the Member, Co-operative

Tribunal, Orissa, Bhubaneswar. On the disposal of the same vide Annexure-2, the matter was closed with an order of remand but, however, under the specific direction at paragraph-4 therein. After the remand order is passed by the appellate authority, proceeding recommenced and this time the proceeding got concluded answering in favour of the present petitioner but appearing again ex parte. Opposite party no.1 being aggrieved by such allowing of the surcharge proceeding vide Annexure-3 preferred T.A.No.129 of 2009, which appears to have been disposed of vide Annexure-4 again remanding the proceeding. Mr.Sahoo, learned counsel for the petitioner in his challenge to Annexure-4 contested the matter on the ground that since there was final disposal of the surcharge proceeding, the appellate authority instead of remanding the matter ought to have decided the same on merit taking into consideration the evidence and materials available on record.

3. Mr.U.K.Sahoo, learned Additional Standing Counsel appearing for the State on the other hand in his attempt to support the order at Annexure-4 taking to Annexure-3 contended that the disposal is not in terms of direction in Annexure-2. Mr.Sahoo, learned Additional Standing Counsel on the premises that petition having no merit, sought for dismissal of the same,.

4. Considering the rival contentions of the parties, this Court finds the moot question required to be decided here is whether the remand proceeding vide Annexure-3 is strictly in terms of the direction contained in annexure-2?. In the process, in reading of Annexure-2 direction, this Court finds while remanding the proceeding, the appellate authority observes as follows:

“3. Even if the appellant was not co-operating with the proceeding, no adverse order can be passed against him in his absence without any evidence.

4. The appeal is allowed and the impugned order is set aside. The Surcharge proceeding is remanded to the lower Court for fresh disposal following the legal procedure. The appellant shall be noticed along with the materials and the detail extract of the audit report holding him liable for any amount, be given reasonable opportunity to file his written statement/show cause, Evidence adduced by both the parties shall be recorded and the other party shall be provided with reasonable opportunity to cross-examine the witness. Documents admitted into evidence shall be marked with exhibit number and the final order must be reasoned one. Parties are to appear before the lower Court on 30.03.2009.”

4. Reading the aforesaid, this Court finds while remanding the matter, the appellate court had a clear direction that not only the parties will be noticed but the notice be noticed along with material and detail extract of the audit report to all to file written statement/show cause. There is also direction for recording evidence of both the side with opportunity of cross-examination.

4. It is in the second round of litigation in the remand proceeding, this Court on perusal of the entire order finds in the remand of the proceeding, there was no appearance of the opposite party no.1 here. As a consequence of non-cooperation, this Court finds since the surcharge proceeding was at the instance of the State and in the event State was not cooperating, the surcharge proceeding should have been dismissed on this ground alone and in the situation, there is no occasion on the part of the original authority in proceeding in the mater again to decide the same on merit. On perusal of the

remand order at annexure-4, this Court finds the appellate authority in the second round of litigation has come to observe as follows:

“4. The learned Asst. AG.C.S. in his impugned order has mentioned the direction of the Tribunal dated 12.2.2009 in T.A. 75/2005, but did not follow the same. If the appellant had failed to adduce any evidence, it is boggling mind what was the basis for the learned lower Court to exonerate the respondent from all the surcharges relying on some documents and facts. He has not followed the direction of the Tribunal nor the procedure under rule 70 of the O.C.S. Rules, 1965. Due to deliberate violation of the mandates of the rules and direction of the Tribunal for disposal of the surcharge proceeding both the parties are compelled to incur avoidable expenditure which is a drained on public exchequer.

4. The appeal is allowed and the surcharge proceeding is remanded for fresh disposal according to the direction of the Tribunal and following the mandates of the O.C.S. Rules. The parties are directed to appear before the lower court on 18.4.2010.”

5. Keeping in view the above observation and as there is violation of appellate authorities direction and as this Court finds the remand proceeding is not undertaken in strict terms of the direction in Annexure-2, the order must go. As a consequence, this Court

finds there is reasonable consideration of the appellate authority vide Annexure-4 again remanding the matter to consider such important issue in the participation of the parties. This Court finds, there is great amount of prejudice to the present petition for non-cooperation of the opposite party no.1 and the matter is again and again remanded. It is only for their default a party is forced to face a litigation further. As this Court finds there is no co-operation of opposite party no.1, while remanding the matter, this Court imposes a cost of Rs.20,000/- (Rupees twenty thousand) on opposite party no.1 which will be deposited in Red Cross fund of the district concerned within a period of two weeks hence. Failure in depositing the same, there can be recovery of such amount treating it as Civil recovery following procedure under the OPDR Act.

6. The writ petition stands disposed of but however with the order of remand and with cost as awarded hereinabove.

sks

(Biswanath Rath)
Judge