

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C. No.11555 of 2022

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

Ashabaree Samal

....

Petitioner

-versus-

OUAT, Bhubaneswar and Anr.

....

Opp. Parties

Advocates appeared in the case:

For Petitioner

:

Mr. Prafulla Kumar Rath, Adv.

-versus-

For Opp. Parties

:

*Mr. Avijeet Pal, Adv.
(for OUAT)*

CORAM:

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-05.09.2022

DATE OF JUDGMENT:-13.09.2022

Dr. S.K. Panigrahi, J.

1. In the present writ petition, the petitioner has assailed the order dated 25.04.2022 passed by Registrar, Odisha University of Agriculture and Technology (hereinafter referred to as "OUAT"), disposing the petitioner's representation seeking publication of

result for the post of Assistant Professor of Veterinary Microbiology in OUAT.

2. The case, in a nutshell, is that, OUAT issued advertisement dated 18.11.2014 inviting applications for multiple posts including the post of Assistant Professor of Veterinary Microbiology wherein one post was reserved for S.C.(W) category. The present petitioner put forth her application under the said advertisement for the post of Assistant Professor of Veterinary Microbiology.
3. After preliminary scrutinization, the present Petitioner was issued a call letter on 08.09.2015, inviting her for an interview for the post of Assistant Professor of Veterinary Microbiology which was scheduled to be held on 14.09.2015 at 3:00PM.
4. Meanwhile, one Dr. Niranjana Soren had approached this Court in W.P.(C) No. 24399 of 2014 alleging that the said advertisement was violative of the provisions of the ORV Act. In W.P.(C) No. 24399 of 2014, Dr. Niranjana Soren was pleased to file I.A. No.15944 of 2015, wherein, vide order dated 14.09.2015, this Court was pleased to direct as an interim measure that the selection for the said post may be made but no appointment order shall be issued in favour of the successful candidate without the leave of this Court. The relevant portion of this Hon'ble Court's order dated 14.09.2015 in W.P.(C) No. 24399 of 2014 is reproduced hereunder:

"Considering the submission made by the materials available on record. Since the interview for the post of

Assistant Professor of Veterinary Microbiology is scheduled to be held on 14.09.2015, this court as an interim measure directs that the selection for the said post may be made, but no appointment order shall be issued in favour of the successful candidate, without leave of this Court."

5. Accordingly, it transpires from the materials available on record that the interviews were conducted for the post of Assistant Professor of Veterinary Microbiology by OUAT on 14.09.2015, but the results of the interview were not declared by OUAT given the interim direction in effect.
6. As the interim direction continued to remain effective, the same Dr. Niranjana Soren was appointed as Assistant Professor of Veterinary Microbiology as a S.T. Candidate in OUAT on 08.11.2021 against a subsequent advertisement. Upon securing his appointment, Dr. Niranjana Soren moved I.A. No. 1527 of 2022 seeking withdrawal of his previous Writ Petition i.e. W.P.(C) No. 24399 of 2014. This Court vide its order dated 11.02.2022 was pleased to allow I.A. No. 1527 of 2022 in W.P.(C) No. 24399 of 2014 and disposed off the Writ Petition as withdrawn. The interim orders secured by Dr. Niranjana Soren, consequently stood vacated.
7. The present Petitioner, subsequently submitted an application dated 17.02.2022 requesting OUAT to take necessary steps, declare the results of the interview process dated 14.09.2015 and issue appointment letters to the successful candidate/candidates.

8. Vide the impugned order dated 25.04.2022, the Registrar, OUAT, disposed off the present Petitioner's application with the following observation:

"...In the instant case it is to state that in the meanwhile new recruitment procedure has been formulated according to the guidelines of UGC/ ICAR. The recruitment of Asst. Professor is going on as per the approved guideline of Government. As such the post shall be filled up with the fresh permission of Government for which the Govt, has been requested separately. After receipt of the Govt, permission, the said post will be filled up afresh following new recruitment procedure...."

9. Learned counsel for the petitioner submitted that there remains no doubt about the petitioner's bona fide participation in the selection process. The petitioner is also seized of the fact that she has no indefeasible right to be selected and that there is no guarantee of her being declared as the successful candidate to be appointed in the post for Assistant Professor of Veterinary Microbiology pursuant to the advertisement dated 18.11.2014. However, the learned counsel vehemently contends that the petitioner has a right to know the outcome of the selection process. The selection process was kept in abeyance on account of an act of this Court which could by no stretch of imagination be attributed to her. It is the petitioner's submission that once the interim orders of this Court

stood vacated, OUAT was obligated to publish the results of the selection process conducted pursuant to advertisement dated 18.11.2014 especially considering that a post of Assistant Professor of Veterinary Microbiology still remains vacant and therefore can be filled up by OUAT with the successful candidate of the selection process so conducted.

10. *Per contra*, counsel for the Respondent submits that the present petitioner did apply for the post of Assistant Professor of Veterinary Microbiology but the call letter issued to her on 08.09.2015 specifically mentioned that the selection and filling up of the subject post is subject to the result of W.P.(C) No. 24399 of 2014 filed by Dr. Niranjana Soren. The present petitioner has no vested legal right to be appointed against the said post. OUAT did not take any steps for selection of Assistant Professor of Veterinary Microbiology in obedience of this Court's interim orders. In the meanwhile, given the need to fill up vacant posts, OUAT had published advertisement dated 10.06.2020 wherein Dr. Niranjana Soren had been successfully appointed which resulted in him withdrawing W.P.(C) No. 24399 of 2014. Counsel for the Respondents earnestly contended that it has been decided in a meeting held by top government authorities and OUAT on 30.04.2022 that all vacant posts will be filled through direct recruitment following proper procedures. Consequently, the vacant post of Assistant Professor of Veterinary Microbiology which the

petitioner relies on, will be filled according to OUAT Recruitment Rules with proper observance of the ORV Act via the new recruitment procedure formulated according to the guidelines of UGC/ICAR which lays down new qualifications for the said post and so the recruitment process of 2014 cannot be acted upon.

11. Heard both parties. *Actus curiae neminem gravabit* is one of the cornerstones of justice and it is well founded in law that an act of the court can prejudice no one.

12. The abovementioned maxim literally translates to “an act of court shall prejudice no one”, is founded upon the principles of justice and good sense; and affords a safe and certain guide for the administration of the law. By virtue of it, where a case stands over for argument from term to term on account of the multiplicity of business in the court, or for judgment from the intricacy of the question, or if an interim order of the Court is in effect, the party ought not to be prejudiced by that delay.

13. It is the plain and unqualified obligation of every person against, or in respect of whom an order is made by a court of competent jurisdiction, to obey it unless and until that order is discharged. Disobedience of orders of a court strikes at the very root of the rule of law on which the judicial system rests. Judicial orders are bound to be obeyed at all costs. Howsoever grave the effect may be, is no answer for non-compliance of a judicial order. Judicial orders cannot be permitted to be circumvented. Therefore, if by such an

order, delay and laches is caused which affects the rights of a party, then the party cannot be allowed to be prejudiced against merely due to the delay caused by such an order remaining in effect.

14. In *Alexander Rozer Charles Carnie v. The Comptoir D'Escompte De Paris*¹, the Privy Council had observed as follows:

“xxx one of the first and highest duties of all Courts is to take care that the act of the Court does not injury to any of the Suitors, and when the expression “the act of the Court” is used, it does not mean merely the act of the Primary Court, or of any intermediate Court of appeal, but the act of the Court as a whole, from the lowest Court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case.”

15. I have no manner of doubt that it is the bounden duty of this court to see that if a party has been harmed by an act of court, he should be restored to the position that he was occupying but for such act. It is trite that there is no higher principle for the guidance of the court than the one that no act of the court should harm any litigant.

16. The Hon'ble Supreme Court in *Kanoria Chemicals and Industries Ltd. v. U.P. State Electricity Board*² also held that:

“11. It is equally well settled that an order of stay granted pending disposal of a writ petition/suit or other proceeding, comes to an end with the dismissal of the substantive proceeding and that it is the duty of the

¹1869 3 AC 465

²(1997) 5 SCC 772

court in such a case to put the parties in the same position they would have been but for the interim orders of the court. Any other view would result in the act or order of the court prejudicing a party (Board in this case) for no fault of its and would also mean rewarding a writ petitioner in spite of his failure. We do not think that any such unjust consequence can be countenanced by the courts."

17. In this regard we may also refer to what has been observed in ***State of Gujarat v. Essar Oil Limited***³ in paragraphs 71 and 72:

"71. The second principle that an act of court cannot prejudice anyone, based on the Latin maxim actus curiae neminem gravabit is also encompassed partly within the doctrine of restitution. This actus curiae principle is founded upon justice and good sense and is a guide for the administration of law.

72. The aforesaid principle of "actus curiae" was applied in A.R. Antulay v. R.S. Nayak wherein Sabyasachi Mukharji, J. (as His Lordship then was) giving the majority judgment for the Constitution Bench of this Court, explained its concept and application in p. 672, para 83 of the Report. His Lordship quoted the observation of Lord Cairns in Rodger v. Comptoir D'Escompte de Paris, LR at p. 475 which is set out below:

"Now, Their Lordships are of opinion, that one of the first and highest duties of all courts is to take care that the act of the court does no injury to any of the suitors, and when the expression 'the act of the court' is used, it does not mean merely the act of the primary court, or of any intermediate court of appeal, but the act of the court as a whole, from the lowest court which entertains jurisdiction

³(2012) 3 SCC 522

over the matter up to the highest court which finally disposes of the case. It is the duty of the aggregate of those tribunals, if I may use the expression, to take care that no act of the court in the course of the whole of the proceedings does an injury to the suitors in the court."

18. In **Ram Krishna Verma v. State of UP**⁴ the Hon'ble Supreme Court has observed that the High Court while exercising its power under Article 226 of the Constitution of India can consider if the interest of justice requires any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralised.

19. Before concluding this aspect, it is necessary to refer to the following observations in paragraph 28 of the decision in **South Eastern Coalfields Ltd. v. State of M.P.**⁵ which would entitle the petitioner to relief:

"28. That no one shall suffer by an act of the court is not a rule confined to an erroneous act of the court; the "act of the court" embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the court would not have so acted had it been correctly apprised of the facts and the law. The factor attracting applicability of restitution is not the act of the court being wrongful or a mistake or error committed by the court; the test is whether on account of an act of the party persuading the court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which

⁴(1992) 2 SCC 620

⁵(2003) 8 SCC 648

it would not have suffered but for the order of the court and the act of such party. The quantum of restitution, depending on the facts and circumstances of a given case, may take into consideration not only what the party excluded would have made but also what the party under obligation has or might reasonably have made. There is nothing wrong in the parties demanding being placed in the same position in which they would have been had the court not intervened by its interim order when at the end of the proceedings the court pronounces its judicial verdict which does not match with and countenance its own interim verdict. Whenever called upon to adjudicate, the court would act in conjunction with what is real and substantial justice. The injury, if any, caused by the act of the court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences."

20. The learned counsel for the petitioner further highlighted the effect of dismissal of a writ petition on an interim order passed therein. He submitted that on dismissal of the writ petition and vacating the interim order passed earlier, the status quo ante ought to be restored. The petitioner was not seeking adjudication of any right to be selected but was merely seeking to be made aware of the result of the selection process which was kept in abeyance when the interim order was passed.

21. This Court is sensitive to the position of law, which governs the field of appointment of candidates. A person does not acquire a legal right to be appointed only because his name appears in the select list or he is called for an interview. He, in terms of Article 16 of the Constitution of India, has only a right to be considered therefore. [See *Pitta Naveen Kumar v. Raja Narasaiah Zangiti*⁶]. The state as an employer has a right to fill up all the posts or not to fill them up. In *Shankarsan Dash v. Union of India*⁷, a Constitution Bench of the Hon'ble Supreme Court held:

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted."

⁶(2006) 10 SCC 261

⁷(1991) 3 SCC 47

22. In view of operation of interim order, passed in W.P.(C) No. 24399 of 2014, it is to be noted that filing of the writ petition and grant of interim relief in the said petition was beyond the control of present petitioner. The present petitioner cannot be blamed for operation of interim relief against the respondents qua filling of 'the post'. The maxim '*Actus Curiae Neminem Gravabit*' connotes that act of the Court shall prejudice none is required to be appreciated in the backdrop of factual matrix of this case.

23. Appropriate support can be drawn from the judgment of the Apex Court in the matter of ***Karnataka Rare Earth v. Senior Geologist, Department of Mines & Geology***⁸, para 10 of which reads thus:

"10. In South Eastern Coalfields Ltd. (2003) 8 SCC 648, this Court dealt with the effect on the rights of the parties who have acted bona fide, protected by interim orders of the Court and incurred rights and obligations while the interim orders stood vacated or reversed at the end. The Court referred to the doctrine of actus curiae neminemgravabit and held that the doctrine was not confined in its application only to such acts of the Court which were erroneous; the doctrine is applicable to all such acts as to which it can be held that the Court would not have so acted had it been correctly apprised of the facts and the law. It is the principle of restitution which is attracted. When on account of an act of the party, persuading the Court to pass an order, which at the end is held as not sustainable, has resulted in one party gaining advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it

⁸(2004) 2 SCC 783

would not have suffered but for the order of the Court and the act of such party, then the successful party finally held entitled to a relief, assessable in terms of money at the end of the litigation, is entitled to be compensated in the same manner in which the parties would have been if the interim order of the Court would not have been passed. The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the Court, or (b) to make restitution for what it has lost."

24. The respondents in their reply have come out with plea that the selection list was not released for the reason of operation of interim relief in W.P.(C) No. 24399 of 2014 and expiry of such a long period which saw changes in the recruitment process and policy. Both these reasons, in my opinion, are required to be overlooked in the backdrop of above referred reasons, as the petitioner cannot be blamed for the same.
25. As stated herein above, the post against which the Petitioner is requesting the release of results as the post is still lying vacant with the respondents. In the aforesaid background, this Court is of the view that the case for showing indulgence in extraordinary jurisdiction is made out.
26. Accordingly, while allowing the aforesaid Writ Petition, this Court sets aside the impugned order of the Registrar, OUAT dated 25.04.2022 and directs the Opposite Parties to release the result of the selection process within two weeks and issue the necessary

appointment letter to the successful candidate within two weeks thereafter.

27. The Writ Petition is disposed of being allowed.

(Dr. S.K. Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 13th of September, 2022/B. Jhankar

