

**ORISSA HIGH COURT: CUTTACK**

**AFR**

**W.A. NO. 2756 OF 2023**

In the matter of an appeal under Clause 10 of the Letters Patent of Patna High Court read with Article 4 of the Orissa High Court Order, 1948 and Chapter-III, Rule-6 of the Orissa High Court Rules, 1948.

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Keki Mohan Baitharu ..... Appellant

-Versus-

Sub-Collector-cum-Chairman,  
District Level Selection  
Committee (Jogan Sahayak),  
Nuapada & others ..... Respondents

For appellant : M/s. S.K. Joshi, S.K. Sahoo  
and S. Behera, Advocates

For respondents : Mr. R.N. Mishra,  
Addl. Government Advocate  
[Respondent Nos.1-4]

P R E S E N T:

**THE HONOURABLE ACTING CHIEF JUSTICE DR. B.R.SARANGI  
AND  
THE HONOURABLE MR JUSTICE MURAHARI SRI RAMAN**

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**DECIDED ON : 03.01.2024**

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**DR. B.R. SARANGI, ACJ.** The appellant has filed this writ appeal seeking to quash the order dated 03.11.2023 passed in

W.P.(C) No.12588 of 2019, by which the learned Single Judge has directed the Sub-Collector, Nuapada to appoint respondent no.6 as Jogana Sahayak in respect of Kirkita Gram Panchayat within a period of one month from the date of passing of the order.

2. The factual matrix leading to filing of this writ appeal, in brief, is that pursuant to the advertisement dated 16.04.2015 issued by respondent no.1 for the post of Jogana Sahayak, on contractual basis, in respect of Kirkita Gram Panchayat under Khariar Panchayat Samiti in the district of Nuapada, the appellant submitted his application form along with all the required documents, including the residential certificate, which was acknowledged by the authority. But, on scrutiny of the applications, the appellant's application was rejected on the ground "Copy of Residential Certificate not submitted", as mentioned in the remark column of the list of applicants whose applications are rejected due to over age, under age and non-submission of documents, as has been placed in the proceedings of the District Level Selection

Committee Meeting held on 30.09.2015 for selection of Jogan Sahayak in the Office Chamber of Civil Supplies, Nuapada.

3. Mr. S.K. Joshi, learned counsel appearing for the appellant contended that since the application form submitted by the appellant, which contained the residential certificate, was accepted by the respondent-authority and at no point of time the appellant was informed/indicated that his application form was defective due to non-submission of residential certificate, subsequent rejection thereof cannot be sustained in the eye of law. It is further contended that once the application form of the appellant was acknowledged to be in order, the same could not have been rejected subsequently on the ground of non-availability of the residential certificate. It is further contended that residential certificate of the appellant was removed by one Nanda Kishore Tandi, the then Head Clerk in the office of the Civil Supplies Officer (CSO), Nuapada in order to accommodate his own candidate-respondent no.6. Without considering the

very vital aspect of the matter, learned Single Judge has passed the impugned order dated 03.11.2023 in W.P.(C) No.12588 of 2019. Therefore, the appellant seeks for interference of this Court.

4. Mr. R.N. Mishra, learned Additional Government Advocate appearing for the State-respondents vehemently contended that the appellant has tried to make out a new case by preferring appeal. Merely because the appellant's application form was received/acknowledged, that does not indicate that he had submitted residential certificate at the time of submission of application form. If the application form was received by the respondent-authority by giving acknowledgement, no inference can be drawn that the appellant had submitted residential certificate, as has been stated in the memo of appeal. Rather, on receipt of the applications, when scrutiny was made, it was found that the application form submitted by the appellant was incomplete one. As such, the allegation made, that one Nanda Kishore Tandi, the then Head Clerk of the office of the CSO, Nuapada has removed the residential

certificate, is based on surmises and conjecture. It is also contended that the said Nanda Kishore Tandi was not made as a party to the writ petition. Therefore, the contention of the learned counsel for the appellant, that due to removal of residential certificate from the application form the appellant was not considered for selection, cannot be sustained in the eye of law. It is further contended that whether the said Nanda Kishore Tandi, the then Head Clerk in the office of the CSO, Nuapada has removed the residential certificate or not, is also a disputed question of fact, which cannot be resolved under writ jurisdiction in exercise of the power under Article 226 of the Constitution. Therefore, it is contended that the learned Single Judge is well justified in passing the order impugned which does not require interference of this Court.

5. This Court heard Mr. S.K. Joshi, learned counsel appearing for the appellant and Mr. R.N. Mishra, learned Additional Government Advocate appearing for the State-respondents in hybrid mode. The pleadings have been exchanged between the parties

and with the consent of learned counsel for the parties, the writ appeal is being disposed of finally at the stage of admission.

6. There is no dispute with regard to the fact that engagement of Jogana Sahayak was made by following the guidelines issued on 21.04.2012 by the Government of Odisha in Food Supplies and Consumer Welfare Department, wherein procedure for appointment of Jogana Sahayak (JS) by the Gram Panchayats has been prescribed to the following effect:-

**“Procedure for Appointment of Jogana Sahayak (JS) by G.Ps**

*The GPs shall make a resolution in their meeting to appoint a JS if they are dealing with at least 150 Q of PDS items (Rice, Wheat & Sugar) in a month. The resolution also indicate the amount of honorarium for the JS (between Rs.3500 to Rs.4000/-). This resolution shall be sent to their BDO. The BDO shall collect all such resolutions from GPs and make a common advertisement inviting applications from interested candidates. The eligibility condition shall be as under*

- 1.The candidate should be a permanent resident of GP.*
- 2. He/She should be graduate (+3).*
- 3. He/She should be of age between 21 to 35 years.*

*The selection will be based on the career making with weight-age for matriculation being 30% for +2 being 30% & for +3 being 40%. A committee under chairmanship of BDO with MMS as convener and concerned Sarpanch of GP member will do the selection & provide the panel of 3 names to the concerned GP for appointment of the 1<sup>st</sup> position (scoring highest marks) as J.S.*

*If no graduate is available, then re-advertisement shall be made for selecting form amongst +2 pass applicants of the concerned GP.*

*The resolution by GPs may be done by 15<sup>th</sup> of May, 2012 & selection by Block may be completed by 15<sup>th</sup> of June, 2012.”*

7. A bare perusal of the aforementioned procedure would go to show that Gram Panchayats shall make resolutions in their meeting to appoint Jogana Sahayaks if they are found to be dealing with at least 150 PDS items (Rice, Wheat & Sugar) in a month. The resolutions shall indicate that Jogana Sahayaks shall be paid an amount of honorarium between Rs.3500/- to Rs.4000/-. The resolutions shall be sent to the respective BDOs, who, on collection of all such resolutions from GPs, shall make a common advertisement inviting applications from interested candidates. The eligibility criteria required that the candidate should be a permanent resident of GP and he

or she should be a graduate (+3) and he or she should be of age between 21-35 years. The selection will be based on the career marking with weightage of 30% for matriculation, 30% for +2 & 40% for +3. The committee under the chairmanship of the BDO constituted with MMS as the convener and concerned Sarpanch of GP as member, would conduct the selection & provide the panel of 3 names to the concerned GP for appointment of the 1<sup>st</sup> position (scoring highest marks) as Jogana Sahayak. If no graduate is available, then re-advertisement shall be made for selecting from amongst +2 pass applicants of the concerned GP.

8. This being the procedure prescribed under the guidelines, an advertisement was issued on 16.04.2015 for filling up of the vacancy of Jogana Sahayak in respect of Kirkita Gram Panchayat under Khariar Panchayat Samiti in the district of Nuapada. As per the advertisement, the age of the candidate would be 21-35 years as on 02.01.2015. Satisfying all the requirement of the advertisement, the appellant submitted his application form, which was also



acknowledged by the authority. But, in the proceeding of the District Level Selection Committee meeting comprising of Sub-Collector, Nuapada, District Panchayat Officer, Nuapada, District Employment Officer, Nuapada and Civil Supplies Officer, Nuapada, the Member Convener for selection of Jogana Sahayak held on 30.09.2015 in the Office Chamber of Civil Supplies, Nuapada examined the documents submitted along with the application form of the appellant. It was found that the appellant had not produced residential certificate, as required for engagement of Jogana Sahayak. Therefore, the application of the appellant was rejected.

9. Against the order of rejection of his candidature, the appellant approached this Court by filing W.P.(C) No.12588 of 2019. Learned Single Judge, vide order dated 03.11.2023, while disposing of the said writ petition came to a conclusion in paragraph-8, which reads as follows:

*“8. Considering the submission of both the parties and since the Opposite Party No.6 has*

*been finally selected for the post of Jogana Sahayak through a proper selection process and his name has been recommended under Annexure-10, this Court is of the view that the Opposite Party No.6 is the suitable candidate for the post of Jogana Sahayak. Accordingly, the Opposite Party No.1/Sub-Collector, Nuapada is directed to appoint the Opposite Party No.6 as Jogana Sahayak in respect of Kirkita Gram Panchayat within a period of one month from today.”*

10. Aggrieved by the order passed by the learned Single Judge directing to issue engagement order in favour of respondent no.6, the appellant has preferred this writ appeal specifically urging that though the appellant had submitted his application form enclosing all the documents, including the residential certificate, the same was rejected illegally on the ground of non-submission of residential certificate. It is contended that the appellant had submitted the residential certificate along with the application form, but at the instance of Mr. Nanda Kishore Tandi, the then Head Clerk in the office of the CSO, Nuapada, the residential certificate of the appellant was removed. Thereby, the selection committee disqualified the appellant. As such, this is a disputed question of fact, which could not have been resolved by the learned Single Judge while entertaining

the writ petition. Apart from the same, the pleadings of the writ petition do not indicate that the appellant had urged this question before the learned Single Judge for consideration. But, after filing of the counter affidavit, while answering the same, the appellant filed rejoinder affidavit and for the first time he urged the said question in paragraph-3 of the said rejoinder affidavit, which reads as follows:

*“3. That it is humbly submitted that pursuant to the advertisement dtd. 16.04.2015 issued by the CSO, Nuapada for selection and appointment of Jogana Sahayak of different Gramapanchayat under five different Blocks in the District of Nuapada, and so far Kirkita G.P. under Khariar Panchayat Samiti the petitioner along with others applied for the said post within the cut-off date, and since the petitioner is having the requisite qualification and other wise eligible for the said post and vide Annexure-7, page-31 the petitioner along with the application form submitted the entire documents along with the resident certificate but reason best known to the authority from the documents submitted by the petitioner the resident certificate was removed at the instance of one Nanda Kishore Tandi the then Head Clerk office of C.S.O., Nuapada in order to accommodate his own man i.e. O.P. No.6.”*

Therefore, the name of Nanda Kishore Tandi, the then Head Clerk in the office of the CSO, Nuapada was brought for the first time by way of rejoinder affidavit by the appellant. If the appellant raised allegation against

the said Nanda Kishore Tandi, he could have impleaded him as a party to the writ petition and, as such, the writ petition suffers from non-joinder of party against whom the appellant raised allegation of removal of residential certificate from his application form, which is a serious issue and the same is required due adjudication by approaching the appropriate forum. More so, the learned Single Judge has not dealt with this issue in the impugned order. For the purpose of clarity, paragraphs- 5, 7 & 8 of the order are extracted hereunder:

*“5. It is pertinent to mention here that the Residential Certificate submitted by the Petitioner was removed by one Nanda Kishore Tandi, the then Head Clerk in the office of the C.S.O., Nuapada in order to accommodate his candidate i.e. the Opposite Party No.6.”*

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*7. Learned counsel for the Opposite Party No.6 submits that though the Opposite Party No.1/Sub-Collector, Nuapada has issued the letter dated 16.07.2019 under Annexure-10 to the B.D.O, Khariar directing him/her to instruct the Sarpanch of Kirkita Grama Panchayat to issue an order of engagement in favour of the Opposite Party No.6, till date the Sarpanch of Kirkita Gram Panchayat has not allowed the Opposite Party No.6 to join in the post of Jogana Sahayak as the present Petitioner has obtained an order of stay of o operation of the letter dated 16.07.2019 under Annexure-10 from this Court vide order, dated 31.07.2019, which impeded the selection procedure till date.*

*8. Considering the submission of both the parties and since the Opposite Party No.6 has been finally selected for the post of Jogana Sahayak through a proper selection process and his name has been recommended under Annexure-10, this Court is of the view that the Opposite Party No.6 is the suitable candidate for the post of Jogana Sahayak. Accordingly, the Opposite Party No.1/Sub-Collector, Nuapada is directed to appoint the Opposite Party No.6 as Jogana Sahayak in respect of Kirkita Gram Panchayat within a period of one month from today.”*

11. In view of such position, when serious allegation has been made by the appellant that Mr. Nanda Kishore Tandi is responsible for his disqualification by removing his residential certificate from the application form, which is a disputed question of fact, the writ court could not have entertained the writ petition. Therefore, the learned Single Judge has committed gross error apparent on the face of the record and as a consequence thereof, the order dated 03.11.2023 passed in W.P.(C) No.12588 of 2019 cannot be sustained in the eye of law. Furthermore, if the appellant's case is that his residential certificate was removed from his application form by Mr. Nanda Kishore Tandi, he should have made such allegation at the first instance while filing the writ petition. Making of such

allegation subsequently after filing of the writ petition would amount to suppression of material fact before the writ Court. Thereby, the writ petition suffered from suppression of material facts.

11.1. In **S.J.S. Business Enterprises (P) Ltd v. State of Bihar**, (2004) 7 SCC 166, the apex Court at paragraph-13 of the judgment observed that as a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. The suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the Court, whatever view the Court may have taken.

11.2. In **Pushpam Pharmaceuticals Co. v. Collector of Central Excise**, 1995 Supp(3) SCC 462, while considering the provision of Section 11-A of Central Excise & Salt Act, the apex Court held that the expression 'suppression of fact' is to be construed strictly because it has been used in company of such

strong words as fraud, collusion or willful default. It does not mean omission. The act may be deliberate.

11.3. In **Collector of Customs v. Tin Plate Co. of India Ltd.**, (1997) 10 SCC 538, while considering Section 28 (1) of Customs Act, the apex Court held that the expression 'suppression of facts' would mean a deliberate or conscious omission to state a fact with the intention of deriving wrongful gain.

12. Furthermore, the conduct of the appellant is suspicious, as he has not approached this Court with clean hands. Thereby, he is not entitled to get any relief, as he has not approached this Court with clean hands.

12.1. In **State of Haryana v. Karnal Distillery**, AIR 1977 SC 781, the apex Court refused to grant relief on the ground that the applicant had misled the Court.

12.2. In **Chancellor v. Bijayananda Kar**, AIR 1994 SC 579, the apex Court held that a writ petition is liable to be dismissed on the ground that the petitioner did not approach the Court with clean hands.

12.3. Taking into consideration the above judgments, this Court, in **Netrananda Mishra v. State of Orissa**, 2018 (II) OLR 436, came to a conclusion in paragraph-26 of the said judgment and held as under:-

*“.....For suppression of facts and having not approached this Court with a clean hand, the encroacher is not entitled to get any relief, particularly when the valuable right accrued in favour of the petitioner is being jeopardized for last 43 years for no fault of him, on which this Court takes a serious view.....”*

Therefore, applying the above ratios to the present case, this Court is of the considered view that the petitioner has not approached this Court with clean hands. The said ratios have also been taken note of by this Court in the case of **State of Odisha and others v. Lalat Kishore Mohapatra and Anr.**, 2022 (Supp.) OLR 970.

13. In view of the discussions made above, this Court is of the considered view that since the appellant has approached this Court by suppressing the material facts and without any clean hands, the writ appeal filed by the appellant is not maintainable. As such, the learned Single Judge has committed gross error in not dealing with such question while passing the order



impugned. As a consequence thereof, the order dated 03.11.2023 passed by the learned Single Judge in W.P.(C) No.12588 of 2019 is set aside.

14. In the result, the writ petition and the writ appeal stand dismissed. However, there shall be no order as to costs.

**(DR. B.R. SARANGI)  
ACTING CHIEF JUSTICE**

**M.S. RAMAN, J.** I agree.

**(M.S. RAMAN)  
JUDGE**

**Orissa High Court, Cuttack  
The 3<sup>rd</sup> January, 2024, Alok**

