

(2015) 119 CLT 1033 : (2015) 1 ILR Ori 1209 : (2015) LabIC 2518

Orissa High Court

Case No: Writ Petition(C) No. 21638 of 2012

Justice Ashok Kumar
Samantaray

APPELLANT

Vs

State of Odisha and
Others

RESPONDENT

Date of Decision: April 7, 2015

Acts Referred:

- Consumer Protection Act, 1986 - Section 10, 13, 14, 15, 16

Citation: (2015) 119 CLT 1033 : (2015) 1 ILR Ori 1209 : (2015) LabIC 2518

Hon'ble Judges: Biswanath Rath, J.

Bench: Single Bench

Advocate: P.K. Ray, N. Dash and S. Dash, for the Appellant; R.K. Mohapatra, Additional Government Advocate, K.N. Jena, B.P. Bal, D.K. Mohapatra, A.K. Sahu, D.P. Mohaptara, M. Pattanaik, S.N. Panda and P.K. Jena, Advocates for the Respondent

Final Decision: Partly Allowed

Judgement

Biswanath Rath, J.

This writ petition has been filed by the petitioner challenging the impugned order of his removal vide Notification No. LSWC-31/2010/8168 dated 09.5.2012 and subsequent corrigendum vide Notification No. LSWC-31/2010/8251/FSandCW dated 10.5.2012 as under Annexures-12 and 13 passed by the State of Orissa removing the petitioner from the post of the President of the State Consumer Dispute Redressal Commission.

2. Facts of the case as reveals from the Writ petition is that the petitioner after retirement from his post as a Judge of the High Court of Orissa was selected to hold the post of President of the Orissa State Consumer Dispute Redressal Commission following the provisions contained in Section 16(1)(a) of the Consumer Protection Act, 1986. It is alleged by the petitioner that while the petitioner was continuing in the post of President of the Orissa State Consumer Dispute Redressal Commission, a Writ petition in the guise of

a Public Interest Litigation was filed before this Court vide W.P.(C) No. 12276 of 2010 making therein the following prayer:

"a). Issue writ of mandamus directing Opp. party No. 1 to discharge its statutory duties and responsibility/obligations under the provision of Consumer Protection Act, Rules and Regulations framed there under to achieve the aim and objective of the Consumer Protection Act.

b). Writ of mandamus directing the Opp. party No. 1 to enforce and see that the State Commission and Dist. Forums function/discharge their statutory duties and responsibilities as provided under provisions of Consumer Protection Act, Rules and Regulations framed hereunder.

c). Writ of mandamus directing the Opp. party No. 1 to initiate disciplinary proceeding and take action against the erring members and Presidents of the Dist. Forums and State Commission and the staffs who found to be guilty in discharging their duty and responsibility under the provision of Consumer Protection Act, Rules and Regulations framed there under and more particularly under Rule-6(5)(d), 3(6)(d) of Orissa Consumer Protection Rule and Rule-13(1)(f) of Central Consumer Protection Rules and also not to pay salary to the erring members and Presidents for the days of their unauthorized absence from the duty.

d). Issue writ of mandamus/certiorari to State Commission, Opp. party No. 2 to discharge its power, duties and function in accordance with provision of Consumer Protection Act, Rules and Regulation framed there under and more particularly U/s. 26-B of Consumer Protection Act and also not to function in contravention of law which are stated in the foregoing paragraphs of the petition and to submit periodical report to this Hon"ble Court.

e). Writ of mandamus directing the State Govt. Opp. party No. 1 to provide/appoint adequate staff and infrastructure to the office of State Commission Dispute Redressal Commission and to the District Forums within a specified time.

f). And direct the State Govt. to constitute a body/agency to inspect the Dist. Forum and State Commission periodically and to submit report about their functioning/working to State Govt. as well as to this Hon"ble Court.

And allow this writ application with cost."

It is as per the developments in the W.P.(C). No. 12276 of 2010, by order dated 11.8.2011 a direction was given for an enquiry on the allegations against the petitioner to be conducted by the Registrar(Inspection and Enquiry) of the High Court of Orissa. Pursuant to such direction, the Registrar (Inspection and Enquiry) of the High Court of Orissa made an enquiry in relation to as many as 167(one hundred sixty seven) case records produced for the purpose and who upon verification of case records produced before him submitted his report in a tabular statement as appearing at Annexure-5 in the present Writ petition.

In the next sitting of the High Court in W.P.(C) No. 12276 of 2010, this High Court based on the information gathered from the report submitted by its Registrar (Inspection and Enquiry) sought for statement from the State Government in the matter of its future course of action on the findings revealed in the said enquiry. It is alleged by the petitioner that following the said direction of the High Court, the Competent Authority instead of holding an enquiry following the provisions contained in Rule 6(5)(h) of the Orissa Consumer Protection Rules, 1987 treated the report of Registrar (Inspection and Enquiry) as a report under Rule 6(5)(h) of the Rule, 1988 and straight way issued the impugned order of termination of the petitioner from the post of President of the Orissa State Consumer Dispute Redressal Commission and on the next day the Competent Authority also issued a corrigendum making correction of the typographical errors in the impugned termination order.

3. The allegation of the learned Senior Counsel appearing for the petitioner in the writ petition is that the petitioner being a President of the State Consumer Dispute Redressal Forum being appointed under the provision of Section 16(1)(a) of The Consumer Protection Act, 1986 even though the Act has no provision for dealing with the allegations against the President of a State Consumer Dispute Redressal Forum but following the provisions contained in Rule 6(5)(h) and the proviso as contained therein, no President of the State Consumer Dispute Redressal Commission shall be removed from his office except by an order made by the State Government on the grounds specified in Clause (f)(g)(h) and (i) of the above Rule and after an enquiry held by a sitting Judge of the High Court nominated by Hon"ble Chief Justice of the High Court of Orissa, in which the President of the State Commission, as the case may be, has been informed all the charges against him and giving the person concerned a reasonable opportunity of being heard in respect of those charges and found guilty. The learned Senior Counsel appearing for the petitioner further contended that there is no enquiry on the allegations against the President of the State Commission by a sitting Judge of the High Court nominated by the Hon"ble Chief Justice of the said High Court, the impugned order of removal is per se bad. The next submission of the learned Senior Counsel is that the impugned order of termination also suffers on account of non-compliance of the principle of natural justice. Learned Senior Counsel further submitted that the impugned order being passed merely based on a report submitted by the Registrar (Inspection and Enquiry) of the High Court of Orissa, is no report in the matter of an enquiry in the case of a President of the State Commission in terms of Rule 6(5)(h) read with proviso therein and thus contended for setting aside of the impugned order on all the three premises stated herein above.

4. Per contra, apart from relying on the contentions raised in the counter affidavit Sri Mohapatra, learned Government Advocate appearing for the State submitted that following a direction in a Public Interest Litigation in W.P.(C) No. 12276 of 2010 dated 11.8.2011 the allegations pertaining to the President of State Commission has been enquired into by the High Court following a direction in a Public Interest Litigation

numbered above and as directed therein, the Registrar (Inspection and Enquiry), High Court of Orissa has also submitted a report finding the allegations against the President of State Commission as true, as available under Annexure-5, and in view of submission of such a report and the findings therein categorically, the Competent Authority felt that there was no need to further probe into the matter treating the said report to be an outcome in an enquiry by the High Court and on acceptance of the findings in the said report, the State Government as authorized under Rule 6(5)(h) of the Rule, 1988 has passed the impugned order. Sri Mohapatra, learned Senior Counsel submitted that neither there is any infraction of any provision contained either in the rules or Act therein nor there is any illegality in the impugned order otherwise and submits that after receipt of the report dated 12.9.2011 the petitioner was issued with a show cause notice on 22.9.2011 enclosing a copy of report to have his say but the Commission chose to ignore such opportunity. Learned Senior Counsel further also submitted that in view of the serious allegations against the petitioner during his incumbency as the President of the State Commission and in view of the particular observations in the report submitted by a person of the rank of Registrar, (Inspection and Enquiry), High Court of Orissa, the petitioner does not deserved to be holding such post. It is next contended by the learned Government Advocate that as against the report submitted by the Registrar (Inspection and Enquiry) Orissa high Court, the petitioner visited the Hon"ble Apex Court by filing Special Leave to Appeal (Civil) No. 27688 of 2011. The above S.L.P was ultimately dismissed by the order of the Hon"ble Apex Court dated 29.9.2011. Since the challenge of the petitioner to the direction for a report and the submission of the report has been dismissed by the Hon"ble Supreme Court, this would be treated as an approval of the report by the Hon"ble Apex Court. Therefore accepting such report by the State and passing the impugned order can not be faulted with. It is on these premises, learned Government Advocate appearing on behalf of the State prayed for dismissal of the Writ petition.

5. Section 16 of the Consumer Protection Act, 1986 deals with Composition of the State Commission. Since this case involves an issue relating to the President of the State Consumer Dispute Redressal Forum, the relevant provisions so far it relates to the President of the State Commission under Section 16 of the Consumer Protection Act, 1986 is quoted herein below.

S. 16. Composition of the State Commission.-

(1) Each State Commission shall consist of-

(a) a person who is or has been a Judge of a High Court, appointed by the State Government, who shall be its President:

[Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of the High Court;]

XX XX XX

Provided that where the President of the State Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman.

XX XX XX

Provided further that a person appointed as a President of the State Commission shall also be eligible for re-appointment in the manner provided in Clause (a) of Sub-section (1) of this section.

XX XX XX

(4) Notwithstanding anything contained in Sub-section (3), a person appointed as the President or as a member before the commencement of the Consumer Protection (Amendment) Act, 2002, shall continue to hold such office as President or member, as the case may be, till the completion of his term.]

6. Section 30 provides Rule Making Power and Section 30(2) deals with that State Government may make rules which since relevant for the purpose, is quoted herein below:

S. 30. Power to make rules.-

XX XX XX

(2) The State Government may, by notification, make rules for carrying out the provisions contained in Clause (b) of Sub-section (2) and Sub-section (4) of Section 7, Clause (b) of Sub-section (2) and Sub-section (4) of Section 8-A, Clause (b) of Sub-section (1) and Sub-section (3) of Section 10, Clause (c) of Sub-section (1) of Section 13, Clause-(hb) of Sub-section (1) and Sub-section (3) of Section 14, Section 15 and Clause (b) of Sub-section (1) and Sub-section (2) of Section 16 of this Act.)."

Following provisions as contained in Section 30(2), the State Government has framed the Orissa Consumer Protection Rules, 1988. Rule 6 of the said rule deals with salary or honorarium and other allowances and terms and conditions of the President and Members of the State Commission. The relevant provision of the rule at Sub-rule 5 of Rule 6, as required for the purpose of the present case, is quoted herein below:-

"6. Salary or honorarium and other allowances and terms and conditions of the President and members of the State Commission:

XX XX XX

(5). The President or a member of the State Commission shall cease to be the President or members as the case may be, if he,-

(a) dies or resigns from office or attains the age specified in Sub-section(3) of Section 16 of the Act; or

(b) is adjudged an insolvent; or

(c) is convicted of an offence involving moral turpitude; or

(d) remains absent in three consecutive sitting of the State Commission; or

(e) Joins a political party or a communal organization; or

(f) becomes physically or mentally incapable to discharge his functions efficiently; or

(g) acquires such financial or other interest as is likely to affect his functions prejudicially; or

(h) so abuses his position as to render his continuance in office prejudicial to the public interest;

[(i) is found not discharging and attending to duties, responsibilities as required, by the provisions of Act, Rules, regulations and instructions issued from time to time:]

[Provided that the President or any member of State Consumer Disputes Redressal Commission shall not be removed from his office except by an order made by the State Government on the grounds specified in Clauses (f), (g), (h) and (i) above and after an enquiry held by a sitting Judge of the High Court nominated by the Chief Justice of Orissa in which the President or member of the State Commission, as the case may be, has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and found guilty and State Government may also suspend the Member/President at any time during or before enquiring into the charges to up hold credibility of the Commission.]"

7. During course of hearing, the case record of W.P.(C) No. 12276 of 2010 as being referred to in this case by both the sides was called for. The aforesaid writ petition is a Public Interest Litigation as filed by the Federation of Consumer Organization, Orissa making serious allegations against the President of the State Commission as well as President of some of the District Consumer Redressal Forum. By order dated 27.7.2011, the Division Bench of the High Court of Orissa hearing the aforesaid W.P.(C). No. 12276 of 2010 as available under Annexure-3 in the present case passed the following order:

"27.7.2011:-

Put up this matter on 10th of August, 2011 along with CONTC No. 1809 of 2009.

The Registrar, State Consumer Dispute Redressal Commission, Orissa, opposite party No. 2, is directed to produce the records of the last three months listing and disposal of the cases by the Commission before this Court on the date fixed. It is further directed that records of 180 FAs, which were disposed of at the stage of admission by the Commission as it appears from Annexure-2 series which is an information given under RTI Act to one Bibhuti Keshori Biswal"

8. On 11.8.2011 in another hearing of the above case, this Court after perusal of certain records of the State Consumer Redressal Forum as available under Annexure-4 in the present case passed the following order:

"11.8.2011:-

As per our order dated 27.7.2011 the Registrar, State Consumer disputes Redressal Commission, Orissa, opposite party No. 2 has produced 180 records, out of which at random we went through eleven records, wherefrom we found that in F.A. No. 59/2009 delay has been condoned in absence of other parties and the appeal has been dismissed. In the other ten cases without issuing notice to the respondents, the same have been disposed of.

F.A.48/2009 has been disposed of on 26.3.2009 after condoning delay at the first instance without issuing notice to the respondent. The order of the District Consumer Forum was set aside and the matter was remitted back for rehearing. Here, the appellant is the Oriental Insurance Company.

In F.A. No. 76/2009, the appellant is ICICI Bank and the State Consumer Disputes Redressal Commission at the stage of admission on 13.04.2009 set aside the entire judgment and order impugned therein.

FA No. 276 of 2009 has been allowed on 24.4.2009 at the stage of admission without giving notice to the respondent. The appellant in this case is M/s.B.M. Marketing, Ganesh Bazar, Dhenkanal.

FA No. 301 of 2009 was allowed at the stage of admission without giving notice to the respondents.

In FA No. 192 of 2009, the only order passed on 30.3.2009 is "Heard. This appeal is allowed at the stage of admission."

In FA No. 319/2009 the order of the District Consumer Disputes Redressal Forum was set aside after hearing the appellant-Branch Manager, UTI Mutual Fund, but the respondent was not given an opportunity of hearing.

FA No. 282 of 2009 was filed on 27.3.2009 by M/s. Tata Motor Finance Ltd. against one Mahendra Kumar Sahoo. In the said appeal, the statutory deposit was made on

13.4.2009. Thereafter, the matter was taken up on 27.4.2009 and without issuing notice to the respondent, the appeal was allowed.

FA Nos. 208, 194, 239 and 250 of 2009 were allowed without issuing notice to the other side.

List this matter on 24.8.2011.

Let the Registrar (landE) verify the rest of the records and find out as to how many cases have been allowed without hearing the respondents and submit a report on the date fixed."

9. It is on the direction of this Court dated 11.8.2011, the Registrar (Inspection and Enquiry), High Court of Orissa In W.P.(C) No. 12276 of 2010 after making detailed enquiry submitted the report vide Annexure-5 for perusal of the Division Bench in W.P.(C) No. 12276 of 2010 and by order dated 22.11.2011 the Division Bench accepted the report submitted by the Registrar (Inspection and Enquiry) High Court of Orissa and by order dated 22.11.2011 while serving the copy of the report on the State Counsel as well as the Counsel for the present petitioner appearing in the said matter, directed the State Counsel to submit to the Court about the reaction of the State Government on the report as well as the action taken thereon. While the matter stood thus the petitioner move two Special Leave Petition in two different aspect vide S.L.P(C) CC. No. 15644 of 2011 and S.L.P.(C). No. 27688 of 2011. At this stage, it is relevant to take note of the order passed by the Hon"ble Apex Court in S.L.P(C) CC. No. 15644 of 2011 and S.L.P.(C). No. 27688 of 2011 which are quoted herein below:

"SLP.(C) No. 15644/2011:

15.9.2011:

Taken on Board.

We do not feel inclined to interfere with the order of the High Court dated 27th July, 2011. We are told by the learned counsel for the petitioner that after the High Court passed order dated 27th July, 2011, another order dated 11th August, 2011 was passed.

The grievance of the petitioner seems to be that despite applying for the certified copy of the order dated 11th August, 2011, the same has not been supplied by the High Court.

In view of the above, we dispose of these petitions with the observation that if an application for certified copy of the order dated 11th August, 2011 has been made in accordance with the rules, copy thereof may be made over to the applicant within a period of seven days from today, if not already done."

"SLP.(C) No. 27688/2011:

29.9.2011:

Taken on Board.

We are of the view that this special leave petition against the order of the High Court is a frivolous piece of litigation. We do not find any merit in this special leave petition.

Accordingly, the special leave petition is dismissed.

However, from the High Court's order dated 11.8.2011, we find that State Consumer Redressal Commission disposed of appeals finally against the order of the District Consumer Forum without giving notice to the other side. We are of the opinion that the High Court is entitled to examine the orders of State Commission, if such situation exists."

On reading of the above order of the Hon"ble Apex Court, it makes it clear that in the first order, the Hon"ble Supreme Court directed the High Court for grant of the certified copy of the order dated 11.8.2011 whereas in the second order the Hon"ble Apex Court held that High Court has the power to look into and examine the orders of the State Commission if such situation exists. This Court does not find any order of the Hon"ble Apex Court in approval of the report of the Registrar (landE), Orissa High Court. Therefore, the State Counsel is incorrect to say that there is approval of the report submitted by the Registrar (landE) of this Court by the Hon"ble Apex Court.

10. Now coming back to the question to be determined at hand whether the report submitted by the Registrar (Inspection and Enquiry), Orissa High Court is a report in an enquiry as contemplated under Rule 6(5)(h) of the Rule 1988? Reading of the above provision speaks of taking an action against the President of a State Consumer Redressal Forum following an enquiry into the allegations as contained in Rule 6(5)(h) of Rule 1987 needs to be conducted by a sitting Judge of the particular High Court that too being assigned with such job by the Hon"ble Chief Justice of the said Court. I find the report as submitted by the Registrar(Inspection and Enquiry) of the High Court of Orissa is a report pursuant to direction of a Division Bench of this Court and thus can not be termed as a report in an enquiry in terms of Rule 6(5)(h) of Rule 1987 read with proviso therein. No doubt, there was serious allegations against the President of the State Commission which was also well within the knowledge of the State Authorities. This Court finds it strange as to how the State Government remain silent over such matter, this Court observes that such serious allegations ought not have been taken lightly by the State. Further looking to the direction of this Court as appearing in the order dated 22.11.2011 in W.P.(C) No. 12276 of 2010 as reflected herein above there appears no direction to the State Government by Division Bench of this Court for accepting the report supplied to it and treat it as an enquiry report as contemplated under Rule 6(5)(h) of the Rules, 1987. The order referred to herein above only required informations regarding the steps taken by the State in the particular matters. Therefore the State Authority treating the said report as an Enquiry report as contemplated under Rule 6(5)(h) of the Rules, 1987 and issuing an order of termination as impugned, is wholly bad. During course of hearing, it

was brought to my notice by the learned Senior Counsel appearing for the petitioner a document i.e. a letter dated 22.6.2010 formed part of a pending Misc. Case No. 7994 of 2014 at the instance of the petitioner issued by the Hon"ble Judge of the Apex Court at the relevant point of time which also categorically reflected that basing on the allegations against the President of the State Commission, the State Government has the power to cause an enquiry in to the allegations of abuse of position in exercise of power under Rule 6(5)(h) of the Orissa Consumer Protection Rules, 1987 and to take action on the basis of a finding in such enquiry. Thus, it is crystal clear that in both the above situations, the State Government was only asked to take action into the allegations against the President of the State Consumer Redressal Forum following the provisions of statute and under no circumstances it can be read beyond that. There appears a strange behavior of the State and inspite of clear and categorical direction for an enquiry on the allegations against the President and that too in accordance with law the State Government remain silent. It is at this stage necessary to make reference of certain decision of the Hon"ble Apex Court in the matter of allegations against the Judges or quasi-judicial authorities which runs as follows:-

In a case between [Union of India and others Vs. A.N. Saxena](#), the Hon"ble Apex Court held that disciplinary action taken in regard to the action taken or purported to be taken in course of Judicial or quasi-judicial proceedings. However in such circumstances the disciplinary proceedings should be initiated with great caution and a close scrutiny of his action and only if the circumstances so warrant for the reason that non-initiation of disciplinary proceeding against a Judicial Officer may shake the confidence of the public in the Officer concerned and if lightly taken it is likely to undermine the independence and in case the action of the Judicial Officer indicates culpability there is no reason why disciplinary action should not be taken against such a person.

In another case between [Union of India and Others Vs. K.K. Dhawan](#), very heavily relying upon its judgment in S. Govinda Menon (1886) 17 BD 536 observed that the Officer who exercises judicial or quasi-judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge and in the disciplinary proceeding, it is the conduct of the Officer in discharge of his official duties which is to be examined. In the said case, the Hon"ble Supreme Court has underlined some of the circumstances in which disciplinary action can be taken, which are as hereunder:

- (i). Where the officer had acted in the manner as would reflect on his reputation or integrity or good faith or devotion of duty.
- (ii). if there is prima-facie material to show reckless or misconduct in discharge of his duty.
- (iii). If he has acted in a manner which is unbecoming of a Government servant.
- (iv). If he had acted in order to unduly favour a party.

Similarly in another decision in between [M.H. Devendrappa Vs. The Karnataka State Small Industries Development Corporation](#), the Hon"ble Supreme Court ruled that any action of an employee which is detrimental to the prestige of the Institution or employment would amount to misconduct.

Law as settled by the Hon"ble Apex Court in a case in between [A. Sanjeevi Naidu, etc. Vs. State of Madras and Another](#), and again in [Hemalatha Gargya Vs. Commissioner of Income Tax, A.P. and Another](#), holding that a designated Authority under the Act can not delegate its power/duty further at all and has to do its duty itself.

Law is also well settled that if an action is required to be under taken in a particular manner then that has to be done in that manner or not. In the case at hand, statute specifically provides a mechanism for handling the issues involved. This position has been settled in a catena of decisions which runs as follows:

Privy Council in Nazir Ahmad v. King Emperor 1936 P.C. 253.

[Municipal Corporation of Delhi Vs. Jagdish Lal and Another](#), .

[Ramchandra Keshav Adke \(Dead\) by Lrs. and Others Vs. Govind Joti Chavare and Others](#), and

[Babu Verghese and Others Vs. Bar Council of Kerala and Others](#), .

11. It is under the circumstances, it can be safely indicated that there was absolutely no enquiry involving the petitioner and as such there was no question of passing an order of termination which action is therefore undoubtedly de hors the provisions contained in the Rule 1988. The report submitted by the Registrar (Inspection and Enquiry), High Court of Orissa can not be termed as a report in terms of Rule, 1988.

12. Under the facts narrated hereinabove and settled Legal position as well as the clear statutory provisions as contained in the Act, 1986 read with Rule 1988 the impugned order at Annexure-12 and the corrigendum vide Annexure-13 cannot be sustained in the eye of law.

13. However, there appear serious allegations against the President of the State Consumer Redressal Forum. A fact finding report is also there by the Registrar (Inspection and Enquiry), High Court of Orissa establishing the allegations. The petitioner on his own filed a document accompanied in the pending Misc. Case No. 7994 of 2014 requesting this Court to take the documents accompanying therein as part of the Writ and be considered. It appended a note sheet obtained through Right to Information Act clearly disclosing that based on opinion of the then Law Secretary, the matter was placed before the Hon"ble Chief Minister for his recommending the particular case for an enquiry into similar set up allegations against the petitioner pending with it to the Hon"ble Chief Justice of the High Court following provisions contained in Rule 6(5) of Rule 1988 and in

pursuance of which the Hon"ble Chief Minister at the relevant point of time on his approval send a D.O. letter vide UM-95/2010-416/CM dated 18.10.2010 addressed to the Hon"ble Chief Justice, High Court of Orissa making request therein. In the circumstances, even though this Court sets aside the impugned orders vide Annexures-12 and 13 for the findings recorded herein above and the position of law as noted herein above, this Court can not shut its eyes to such allegations. It appears that the petitioner has already been removed from the post immediately after the dismissal of the Civil Appeal asking the petitioner to approach this High Court and in the meanwhile by Order dated 24.11.2012, the post has been filled up by a new person. In considering the legal aspect in the matter of possibility of restart of the enquiry in view of attaining superannuation by the petitioner in the meanwhile, this aspect was also being considered by the Hon"ble Apex Court in Civil Appeal No. 2641 of 2012 in the matter of State of West Bengal and others vrs. Pronab Chakraborty along with several other Civil Appeals, the Hon"ble Apex Court held as follows:

"It is therefore apparent, that it is not only for pecuniary loss caused to the Government that proceedings can continue after the date of superannuation. An employee can be proceeded against, after the date of his retirement, on account of "...grave misconduct or negligence...." Therefore, even in the absence of any pecuniary loss caused to the Government, it is open to the employer to continue the departmental proceedings after the employee has retired from service. Obviously, if such grave misconduct or negligence, entails pecuniary loss to the Government, the loss can also be ordered to be recovered from the concerned employee. It was therefore not right for the High Court, while interpreting Rule 10(1) of the 1971 Rules to conclude, that proceedings after the date of superannuation could continue, only when the charges entailed pecuniary loss to the Government."

There exist serious allegations against the then President of the State Commission directly to the Government, further based on an order in the Public Interest Litigation a high level enquiry was undertaken by the High Court of Orissa through its Registrar (Inspection and Enquiry), who had undertaken a great level of pain in scrutinizing the case records of the Commission in as many as 167 cases out of which as many as 30 cases (Appeals) were allowed by the State Commission at Admission stage without issuing notice or affording opportunity to the party suffered by the said judgments/orders. Similarly equal number of cases (Appeals) were also dismissed at the Admission stage, even though these were all 1st appeals under the Act. However, the development through the other channel particularly involving the petitioner, the request of the Hon"ble Chief Minister to the Hon"ble Chief Justice of the State for holding an enquiry, including the observations made in the report submitted through the Registrar (Inspection and Enquiry) of this Court all these cannot be lost sight of. It is, however, left open to the State Government to move in the above issue as it deems fit and proper and if any such action is taken that shall be strictly in terms of provisions contained in Rule 6(5)(h) of the Rule.1988.

14. Under the circumstances, this Court declares the orders vide Annexures-12 and 13 since not in terms of Rule-6(5)(h) of the Rule, 1988 as bad in law and thus sets aside both the orders vide Annexures-12 and 13.

15. The Writ Petition stands allowed to the above extent. However there shall be no order as to cost.