

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.4891 of 2015**

1. Sushil Kumar Pandey, S/o Shri Vijay Pandey, aged about 35 years, R/o Bodari, P.S. Chakarbhatta, Tahsil Bilha, District Bilaspur.
2. Panchu Ram Shrivastava, S/o late Shri Ramkhalawan Shrivastava, aged about 46 years, R/o village Umariya, Police Station & Tahsil Bilha, District Bilaspur.
3. Sant Ram Maravi, S/o Shri Punitram Maravi, aged about 30 years, R/o Village Umariya, Police Station & Tahsil Bilha, District Bilaspur.
4. Saroj Verma, W/o Shri Manharanlal Verma, aged about 46 years, R/o Village Sewati, Police Station & Tahsil Bilha, District Bilaspur.
5. Rajeev Shukla, S/o Shri Ramkumar Shukla, aged about 40 years, R/o Village Patrabhatta, Police Station & Tahsil Mungeli, District Mungeli.
6. Smt. Luxami Kaiwart, W/o Mahesh Kaiwart, aged about 28 years, R/o Village Bertori, Police Station & Tahsil Lormi, District Mungeli.
7. Mohit Ram Sahu, S/o Shri Ganaram Sahu, aged about 36 years, R/o Village Lakhasar, Police Station & Tahsil Lormi, District Mungeli.
8. Dinesh Kumar Dansena, S/o Shri Shriram Dansena, aged about 30 years, R/o Village Baghanibhanwar, Police Station & Tahsil Lormi, District Mungeli.
9. Mahesh Kumar Sahu, S/o Shri Mahetar Ram Sahu, aged about 25 years, R/o Village Telikhami, Police Station & Tahsil Lormi, District Mungeli.
10. Chamanlal Jaiswal, S/o Shri Anandram Jaiswal, aged about 43 years, R/o Village Akharar, Police Station & Tahsil Lormi, District Mungeli.
11. Bhanu Pratap Jaiswal, S/o Shri Umakant Jaiswal, aged about 29 years, R/o Village Akharar, Police Station & Tahsil Lormi, District Mungeli.
12. Salikram Kashyap, S/o Shri Joidha Kashyap, aged about 42 years, R/o Village Nawagaon, Police Station &

Tahsil Lormi, District Mungeli.

---- **Petitioners**

Versus

1. State of Chhattisgarh, through the Secretary, Department of Panchayat & Rural Development, Mahanadi Bhawan, New Raipur.
2. Secretary, Department of School Education, Mahanadi Bhawan, New Raipur, Raipur.
3. Director, Public Instruction, Opposite Old Mantralaya, D.K.S. Bhawan, Raipur, District Raipur.
4. Director, Rajeev Gandhi Siksha Mission Raipur, State Project Office Near D.K.S. Bhawan, Raipur, District Raipur.

---- **Respondents**

For Petitioners : Shri A.N. Pandey, Advocate.
For Respondent : Shri Y.S. Thakur, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

17/12/2015

(1) Heard.

(2) The writ petition filed by the petitioners was dismissed as withdrawn for perusing the matter by filing a representation before the Authorities vide order dated 17.12.2014 passed in W.P.(S) No.5168 of 2014 (Sushil Kumar Pandey & Others V. State of Chhattisgarh & Others).

(3) Again, similar writ petition has been filed by the petitioners for directing the respondents authorities to consider and decide the pending representation of the petitioners dated 08.01.2015 (Annexure P/8).

(4) The petitioners have withdrawn their substantive writ

petition filed by them, and in this present no lis has been brought for adjudication except for direction to decide the representation which is non statutory in character.

(5) In the matter of A.P. SRTC & others Vs. G. Srinivas Reddy & others¹, Their Lordships of the Supreme Court has held that direction to consider the representation has not to be passed without examining the issue & without recording finding on issue and observed in paragraphs 14 to 20 as under:-

“14. We may, in this context, examine the significance and meaning of a direction given by the court to “consider” a case. When a court directs an authority to “consider”, it requires the authority to apply its mind to the facts and circumstances of the case and then take a decision thereon in accordance with law. There is a reason for a large number of writ petitions filed in the High Courts being disposed of with a direction to “consider” the claim/case/representation of the petitioner(s) in the writ petitions.

15. Where an order or action of the State or an authority is found to be illegal, or in contravention of the prescribed procedure, or in breach of the rules of natural justice, or arbitrary/unreasonable/irrational, or prompted by mala fides or extraneous consideration, or the result of abuse of power, such action is open to judicial review. When the High Court finds that the order or action requires interference and exercises the power of judicial review, thereby resulting in the action/order of the State or authority being quashed, the High Court will not proceed to substitute its own decision in the matter, as the will amount to exercising appellate power, but require the authority to “consider” and decide the matter again. The power of judicial review under Article 226 concentrates and lays emphasis on the decision-making process, rather than the decision itself.

16. The High Courts also direct the authorities to “consider”, in a different category of cases. Where an authority vested with the power to decide a matter, fails to

¹ (2006) 3 SCC 674

do so in spite of a request, the person aggrieved approaches the High Court, which in exercise of the power of judicial review, directs the authority to “consider” and decide the matter. In such cases, while exercising the power of judicial review, the High Court directs “consideration” without examining the facts or the legal question(s) involved and without recording any findings on the issues. The High Court may also direct the authority to “consider” afresh, where the authority had decided a matter without considering the relevant facts and circumstances, or by taking extraneous or irrelevant matters into consideration. In such cases also, the High Court may not examine the validity or tenability of the claim on merits, but require the authority to do so.

(17) Where the High Court finds the decision-making process erroneous and records its findings as to the matter in which the decision should be made, and then directs the authority to “consider” the matter, the authority will have to consider and decide the matter in the light of its findings or observations of the court. But where the High Court without recording any findings, or without expressing any view, merely directs the authority to “consider” the matter, the authority will have to consider the matter in accordance with law, with reference to the facts and circumstances of the case, its power not being circumscribed by any observations or findings of the Court.

(18) We may also note that sometimes the High Courts dispose of the matter merely with a direction to the authority to “consider” the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the court to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to “consider” the matter afresh. Be that as it may.

(19) There are also several instances where unscrupulous petitioners with the connivance of “pliable” authorities have misused the direction “to consider” issued by court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to “consider” and dispose of the representation. When the court disposes of the petition with a direction to “consider”, the authority

grants the relief, taking shelter under the order of the court directing him to “consider” the grant of relief. Instances are also not wanting where authorities, unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order “to consider” as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to “consider”, may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of the court's direction to “consider” the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily-wagers seeking regularisation/absorption into regular service is a species of cases, where there has been a large-scale misuse of the orders “to consider”.

(20) Therefore, while disposing of the writ petitions with a direction to “consider”, there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The court should also normally fix a time-frame for consideration and decision. If no time-frame is fixed and if the authority does not decide the matter, the direction of the court becomes virtually infructuous as the aggrieved petitioner will have to come again to court with a fresh writ petition or file an application for fixing time for deciding the matter”.

(6) In view of the law laid down in the aforesaid case, it is quite vivid that the petitioners have not brought out any lis for consideration in this writ petition and the earlier writ petition has already been dismissed as withdrawn, which has become final, I do not find any good ground to entertain the instant writ petition. It is accordingly dismissed.

Sd/-
(Sanjay K. Agrawal)
Judge