

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4431 of 2015**

Mahesh Kumar Nagariya S/o Shri Basant Lal Nagariya,
Aged About 63 Years R/o. Mana Camp, Raipur, District
Raipur (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through : The Secretary,
Department Of Rehabilitation, Mantralaya, Mahanadi
Bhawan, New Raipur, District Raipur (Chhattisgarh)
2. The Special Duty Officer, Department Of General
Administration And Public Grievances Removal Cell,
Mantralaya, Mahanadi Bhawan, New Raipur, District
Raipur (Chhattisgarh)
3. The Commandant, Office Of Commandant, Department
Of Rehabilitation, Mana Camp, Raipur, District Raipur
(Chhattisgarh)

---- Respondents

For Petitioner : Shri Sameer Uraon, Advocate.
For Respondents/State : Shri Suvigya Awasthy, Panel
Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****27/11/2015**

Heard.

(1) Learned counsel appearing for the petitioner would submit that his representation is pending against the order of cancellation of attachment and earlier W.P. (S) No.4574/2005

was filed, which has been disposed of permitting the petitioner to file representation, which he has filed but as the decision has not been taken on the petitioner's representation, this writ petition has again been filed for directing the respondents to decide the representation and, therefore, a direction may be issued to the respondent authorities to decide the pending representation of the petitioner.

(2) After hearing learned counsel for the petitioner, this Court is of the opinion that this writ petition would not be maintainable as this petition has been filed for directing the respondents authorities to consider his representation, which has been filed earlier pursuant to liberty granted by this Court.

(3) In the matter of **A.P. SRTC & others Vs. G. Srinivas Reddy & others**¹, 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 18 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

1 (2006) 3 SCC 674

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 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”

(3) In view of the aforestated legal position, writ petition is dismissed as not maintainable. However, it is made clear that this order will not bar the respondents authorities to decide the pending representation of the petitioner, if any.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-