

HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT

W. A.No.1475 OF 2018

JUDGMENT: *(Per Hon'ble Sri Justice S.V.Bhatt)*

Writ petitioner is the appellant and challenges the order dated 24.09.2018. The operative portion of the order reads thus:

“Having regard to the submissions, this Court deems it appropriate to dispose of the writ petition, leaving it open for the petitioner herein to submit a representation to the respondents within a period of two weeks from the date of receipt of a copy of this order by enclosing a copy of the Circular No.16 (24) 2001-MVI, dated 09.10.2001. If any such representation is made by the petitioner herein, the same shall be examined by the respondents herein and take appropriate action/pass appropriate orders, strictly in accordance with law, as expeditiously as possible, preferably within three months from the date of submission of such representation. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.”

Mr.Nageswara Rao contends that the appellant is entitled to refund of Rs.3,26,428/- in accordance with the Government of India Clarification dated 09.10.2001 and the writ petition ought to have been adjudicated on merits and now disposing of writ petition without adjudicating where the case does not present disputed questions of fact and law is illegal and untenable.

The writ appeal is opposed in all fours by the learned Government Pleader for Mines and Geology. The objection of respondents is that the appellant claims refund by referring a

clarification issued by the Government of India. It is preferable and always necessary that the applicability or otherwise of the clarification issued by the authorities is examined by the authorities, thereafter, the consideration or decision by the authorities can be the matter of judicial review. In other words, the contention is that the prayer, if accepted the same virtually amounts to this Court discharging the duty of primary authority. According to him, in the fact situation this course is impermissible, therefore, the order under appeal is tenable and no ground is shown for interference of this Court.

We have perused the findings recorded in the order under appeal. Prima facie, we are of the view that the appellant by insisting upon adjudication on the ground that the appellant is entitled for refund of amounts in terms of clarification, virtually amounts to this Court discharging the function or duty the authorities vested with such power and discretion. It is desirable that the primary authority examines the issue, takes a view on the fact situation of the case, applies the circular and passes orders. A party aggrieved by such decision, if invokes the jurisdiction of this Court then within the parameters of judicial review such decision could be examined. The findings of the learned Single Judge are confirmed. However, to ensure timely disposal, we direct the Government to dispose of the representation of the appellant within three months. For the said purpose of timely disposal, we give liberty to appellant to submit or re-submit representation by enclosing a copy of this order within two weeks from today .

The Writ Appeal is dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J

Date:08.11.2018

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