

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 283 of 2019

- M/s M N Roy & Sons, Indian Oil Dealer, A Partnership Firm Through Partner Prabir Kumar Naha Roy, Post Office Haldibari (Chirimiri) Police Station Chirmiri, District Korea Chhattisgarh

---- Appellant

Versus

1. Union Of India Through The Ministry Of Commerce And Industries Udyog Bhawan, New Delhi 110107
2. Controller Of Explosives Petroleum And Explosives Safety Organisation (PESO) Awanti Vihar Colony, Main Road, Post Shankar Nagar, Raipur Chhattisgarh
3. State Of Chhattisgarh Through The Secretary, Department Of Food And Civil Supplies, Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur Chhattisgarh
4. The Collector District Korea Chhattisgarh
5. Indian Oil Corporation Ltd. Through The Senior Divisional Manager, Divisional Office, VIP Road, Post Office Ravigram Telibandha, Raipur Chhattisgarh

---- Respondents

For Appellant	:	Shri Kishore Bhaduri with Shri Shashank Thakur, Advocates
For Respondents 1 and 2	:	Shri Bhupendra Singh, Advocate
For Respondents 3 and 4	:	Shri Anand Verma, Advocate
For Respondent No.5	:	Shri Anand Shukla, Advocate

D.B.:- Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Rajani Dubey

Order On Board

18/06/2019

This writ appeal arises out of order dated 29/05/2019 passed by the learned Single Judge whereby the appellant's application for grant of interim relief has been rejected.

2. Though learned counsel appearing for the appellant strenuously urge before us that the order passed by the learned Single Judge is not an interlocutory order but is in the nature of interim judgment, prejudicially affecting the constitutional and legal rights,

after going through the order, we find that the learned Single Judge has rejected the interim application and a *prima facie* consideration has been made by observing that before passing of impugned order, an opportunity of hearing was afforded and that a satisfaction was arrived at regarding possession aspect by the Food Inspector. The said observations, we have no doubt in our mind, are only a *prima facie* consideration and by no stretch of imagination, can be said to be decision of the issues involved in the pending writ petition.

In view of proviso to Section 2 (1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006, in such an event, writ appeal would not be maintainable.

Our attention was drawn to the Full Bench judgment of this Court in the case of **Ajay Gupta v. State of C.G. & ors., 2017 (3) CGLJ 353**. In that decision also, this Court has emphasized that where there is decision affecting the rights, it may not be treated as interlocutory in nature.

3. However, in the present case, there is no decision but only *prima facie* consideration before passing an order on interim application. The order has only culminated in rejection of application for interim relief and nothing more. At this stage, learned counsel for the appellant would submit that since his business has come to a grinding halt as no interim relief was granted, it would seriously affect and he may not carry on his business. We are not called upon, in this appeal, to decide the merits of the case. If according to the appellant, there is serious violation of his fundamental rights of carrying on business on account of order impugned in the writ petition, his remedy lies in approaching the Writ Court for early disposal. Subject to said observations, this appeal is disposed off.

It will be open for the appellant to pray before the learned Single Judge for analogous hearing of all the similar writ petitions.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge