

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.122 of 2020

1. Banshidhar Mishra, male, aged about 58 years, Son of Dharnidhar Mishra
Resident of Village- Phulmalik, P.S.- Sahebpur Kamal, District- Begusarai.
2. Suresh Swapnil, male, aged about 62 years, Son of Sri Rameshwar Prasad
Shaw Resident of Village- Godhana, P.S.- Bachwara, District- Begusarai.
3. Dr. Vinoy Kuma, male, aged about 61 years Son of Late Suresh Prasad Singh
Resident of Village- Basatar, P.S.- Karpi, District- Arwal, Presently residing
at 873/1 Suresh Niwash, Mohit Naryan Singh Path, Punaichak, Patna.
4. Dharendra Narayan Mishra, male, aged about 56 years, Son of Shri Ravindra
Narayan Mishra Resident of Village- Pator, P.S.- Pator, District- Darbhanga.

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Planning and
Development Department Main Secretariat, Patna.
2. Deputy Secretary Planning and Development Department Main Secretariat,
Patna.
3. Principal Secretary Department of Finance, Main Secretariat, Patna.
4. Under Secretary Department of Finance, Main Secretariat, Patna.
5. Accountant General Bihar, Beer Chand Patel Path, Patna.

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Kishore Kumar Thakur, Adv.
For the State	:	Mr. Kunal Tiwary AC to GA-2
For the AG	:	Mr. Bindhyachal Rai, Adv.

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 12-07-2022

Heard learned counsel for the petitioners, learned counsel
for the State and learned counsel for the Accountant General.

2. The petitioners have assailed inter office
communication dated 13-02-2018, whereby some file notings of



the Finance Department have been communicated to the Planning and Development Department. Such inter departmental communication, which has not crystallized into any final decision is sought to be assailed by way of the instant proceedings.

3. The petitioner's claim is for benefit under the MACP scheme.

4. The impugned communication, however, is not a decision with respect to the petitioners' claim, but merely a communication in the process of consideration of similar claims. This Court would consider it useful to take note of a decision of this court in the case of ***Narishbhai Bhagubhai & Ors. vs. Union of India and others*** reported in (2019) 15 SCC1, relevant paragraph read:

“27. In Bachhittar Singh v. State of Punjab a Constitution Bench held that merely writing something on the file does not amount to an order. For a file noting to amount to a decision of the Government, it must be communicated to the person so affected, before that person can be bound by that order. Until the order is communicated to the person affected by it, it cannot be regarded as anything more than being provisional in character.

28. Similarly, in Shanti Sports Club v. Union of India this Court held that notings recorded in the official files, by the officers of the Government at different levels, and even the Ministers, do not become a decision of the Government, unless the same are sanctified and



acted upon, by issuing an order in the name of the President or Governor, as the case may be, and are communicated to the affected persons.

29. *In Sethi Auto Service Station v. DDA, this Court held that: (SCC pp. 185-86, paras 14 & 16)*

“14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned.

16. To the like effect are the observations of this Court in Laxminarayan R. Bhattad vs. State of Maharashtra, wherein it was said that a right created under an order of a statutory authority must be communicated to the person concerned so as to confer an enforceable right.”

5. Having observed so, this Court would further take notice of the fact that by Annexure- P/9 the petitioners claimed to have submitted detailed representation for certain benefit under the ACP/MACP Rules, and the authority is required to pass an order on the petitioners' claim.

6. The application is, therefore, disposed of with a direction to the Principal Secretary, Planning and Development Department, (Respondent No.1) to take a final decision on the



petitioners’ claim Annexure- P/9 within a period of three months
from the date of receipt/production of a copy of this order

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	19-07-2022
Transmission Date	

